

# REPORT

OF THE

JOINT COMMITTEE OF THE LEGISLATURE OF

PENNSYLVANIA,

RELATIVE TO THE

EASTERN STATE PENITENTIARY,

AT

***PHILADELPHIA.***

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By MR. PENROSE of Cumberland.

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READ IN THE SENATE, MARCH 26, 1855.  
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HARRISBURG:

PRINTED BY WELSH & PATTERSON

1855.



## REPORT.

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The joint committee to which so much of the Governor's Message as relates to abuses in the economy and management of the Eastern Penitentiary, was referred, and who were charged with an enquiry into the expediency of repealing the laws which prohibit grand juries from visiting the State Penitentiaries, and of enacting a law to authorize grand juries to visit the Penitentiaries at such periods as may be necessary for the good order and management of said prisons, and the least interference with the system of solitary confinement; report.

It will be remembered that the Governor in his annual message communicated to the General Assembly, "information received from a high official source, of abuses, charged by individuals, as existing in the economy and management of the institution denominated the Eastern State Penitentiary." The charges alleged were comprehended in the message under the following summary: "Frequent misapplication of the public property and public labor to the private advantage of various persons connected with the institution; cruel and unusual punishments inflicted on refractory convict; and the indulgence in great irregularities and gross immoralities on the part of those concerned in the management and general superintendence of the institution." "An institution, which besides its importance to all mankind," as is eloquently remarked by a distinguished writer, "has for Americans the additional interest of having originated with them." "That community," remarks the same writer, "which first conceived the idea of abandoning the principle of mere physical force, even in respect to prisons, and treating their inmates as redeemable beings, who are subject to the same principles of action with the rest of mankind, though impelled by vitiated appetites and perverted desires and that community, which after a variety of unsuccessful trials, could nevertheless not give up the principle, but persevered in this novel experiment, until success has crowned its perseverance, must occupy an elevated place in the scale of political or social civilization." "Pennsylvania belongs this high encomium. She originated this system, and she has persevered, until success has crowned her perseverance. Any thing affecting the economy and management of this institution, thus identified with our national honor and reputation, commanding as it does the admiration of the whole civilized world, and commanding the cause

of humanity, and the moral improvement of mankind, must be viewed with great interest, and demanded, as it has received, the most anxious enquiry, and the severest investigation.

Your committee impressed with the importance of the subject, both as regards the institution itself, and the reputation of those implicated in the charges which had been presented, under circumstances so imposing, determined to make the fullest investigation. They soon ascertained that it could not be conducted at Harrisburg, as advantageously as it could at the place where the institution was located, nor without incurring a very heavy expense, which might be avoided by conducting it at Philadelphia.

They therefore determined to meet for this purpose in that city, on the 16th of December then next, and that notice should be given to the Attorney General, Inspectors and Wardens of the Penitentiary, of this determination. The committee had ascertained by a communication with the Governor, that the high official source from which information of abuses charged by individuals" was received, was the Attorney General of the Commonwealth. They were apprised that these abuses charged, would implicate "the reputation" of individuals, and they knew therefore that the investigation would assume a judicial character, as it regarded these individuals.

A sense of obvious propriety at once suggested that the persons implicated should have all notice, and distinct specifications. The committee therefore, before they left Harrisburg, adopted a resolution, "that the Attorney General should be informed that the committee was organized and ready to proceed to business, and that previous to entering upon an investigation, he will himself, or name a prosecutor, to press the charges against the inspectors, warden and others, of the Eastern Penitentiary; but that the charges be specifically drawn up and preferred, copies whereof shall be furnished to the accused, and the enquiry confined to those charges."

Your committee repaired to the city of Philadelphia, and met pursuant to adjournment, in that city on the 16th of December last, and immediately entered upon the discharge of their official duty. It became manifest at the very outset of the business, that while justice to individuals required that they should be fully informed of the grounds upon which the conduct was questioned, that a due consideration of the importance of the investigation, as affecting a great state interest, equally required that on the part of the commonwealth, it should be so conducted, that full and searching enquiry should be made. While therefore, the committee did not hesitate to direct specifications of charges to be furnished, and to allow the persons implicated the advantages of counsel; they perceived that to conduct the investigation properly, on the part of the State, it was essential that some one should appear for the commonwealth. They ascertained that the charges made, grew out of a previous investigation before the board of inspectors, where evidence was taken, which it was supposed sustained them.

and justified the necessity for a public inquiry. No individual seemed to be disposed to assume the responsibility of appearing as accuser, or to conduct the proceeding in that character before the committee. It was considered therefore, that the interest of the commonwealth required, and public opinion demanded, that the Attorney General should conduct the investigation on the part of the State. The witnesses who were examined to these charges, were for the most part unknown to the committee, and they were equally ignorant of the points to which their testimony should be directed to elicit the truth; this would require some previous acquaintance with the nature of the evidence which could be given, and the character of the individuals by whom such evidence was to be given.

The impropriety of placing the committee, who were in some sort judges, to pass upon the conduct of individuals, in the attitude of accusers, and require that they should direct the investigation with a seeming view to their crimination, occurred to the committee. They felt that it was important in these circumstances that the Attorney General should be retained. He was acquainted with the witnesses, and had been made acquainted with the nature of the charges, and the evidence in reference to them.

The committee were aware that no power was vested in them to employ counsel, and they passed a resolution to this effect; but they were satisfied, that as the exigency of the case required that counsel should be employed, that the proper compensation for the service of counsel should be submitted to the Legislature, in the confidence that a suitable provision would be made.

They frankly communicated their resolutions on this point to the Attorney General, who, with a degree of promptness which does him credit, at once agreed to permit the matter to rest on this ground, and entered upon the very laborious duty of conducting the investigation.

Complying with the resolution of the committee, which was communicated to him, he prepared the following specification of charges, a copy of which was furnished to each of the individuals implicated:—

### CHARGES

Against the Warden, Officers and Agents of the Eastern Penitentiary, for investigation by the joint committee of the Senate and House of Representatives of the Commonwealth of Pennsylvania, on so much of the Governor's message as relates to abuses in the economy and management of that institution; drawn up and preferred by the Attorney General, conformably to the resolution of the committee, dated the 8th of December, 1854.

First. Practices and manners among the officers, agents and females, licentious and immoral; attested by indecent conversations, gross personal familiarities, sexual intercourse, and the existence of a filthy disease; generally known to and participated in by the warden, one John Holloway, one Richard Blunden and his wife, and others unknown.



Second. Embezzlement and misapplication of the public provisions and public property, and of the public labor, to the private and unauthorized use and advantage of various persons connected with the institution, and of others unconnected with it; on the part particularly of the said wife of Richard Blunden, and to the knowledge and with the connivance of the warden; as also to the use and advantage of the warden, for the improving and working of a farm and factory belonging in whole or in part to the said warden.

Third. Cruel and unusual punishments inflicted by order of the warden upon refractory convicts; exemplified in the two following cases: the case of one Seneca Plumly, who, in the depth of winter, was tied up against the wall attached to his cell, by the wrists, while buckets of extremely cold water were thrown upon him from a height, which partly froze on his head and person, and he was shortly after discharged as incurably insane; and the case of Matthias Maccumsey, in whose mouth an iron bar or gag was so forcibly fastened, that his blood collected and suffused up in his brain, and he suddenly died under the treatment.

Fourth. Known practices and habits inconsistent with the object and principles of a penitentiary and its system, subversive of its order, regularity and security; such as the giving of large entertainments within the prison, by the warden, carousing and dancing late at night at the apartments of the said wife of Richard Blunden, within the walls, frequent intoxication, habitual intercourse with lewd and depraved persons, and irregular hours also on the part of the said wife of Richard Blunden, and with the knowledge and connivance of the warden.

Fifth. A frequent and illegal practice in the treatment of convicts by the warden, of departing from, and in effect disregarding the sentences of the courts of justice: relaxing their severity, commuting their inflictions, or evading their real meaning: thus substituting his individual caprice or discretion for the decisions of the law, and defeating the regularity and precision which ought to characterize the penitentiary system.

Samuel R. Wood, the warden, Richard Blunden, and John Holloway, appeared before the committee with counsel. And although it was in the outset stated by the Attorney General, that there was no design to prefer charges against the board of inspectors, or any of them, yet, as the investigation concerned an important institution in some degree committed to their trust, and as the investigation might involve their management of it, it was considered right that they should be permitted to appear and participate in it. A resolution was accordingly adopted, giving to the board of inspectors this right.

Having adjusted these preliminary points, the committee commenced the examination of witnesses and testimony. They continued in session in the city of Philadelphia, from the 16th day of Decem-

ber, the day on which they met there, until the 22d of January following, when they adjourned to meet in Harrisburg. During this period, sixty-five witnesses were examined, and their testimony reduced to writing; and after their return to Harrisburg, another witness, who had been prevented by indisposition from giving evidence before the committee in the city, appeared and was examined, and his testimony reduced to writing also.

Your committee now present the result of the laborious and important investigation with which they have been charged, and such suggestions as have occurred to them to grow out of it.

Under the first charge of "practices and manners among the officers, agents and females, licentious and immoral," much evidence was given. It appears that the warden, Samuel R. Wood, who, by law, is authorized to employ the under keepers, had engaged Richard Blundin, as an under keeper. Richard Blundin was a married man, and had resided with his wife at Norristown in Montgomery county. He there became acquainted with Mr. Wood, and was employed by him in his private business. The warden had great confidence in him, and when, he consented to accept the office which he now holds, he determined to employ Richard Blundin. The evidence concurred in establishing the propriety of this selection, and proved that Mr. Blundin was a most excellent officer, having the confidence, in a remarkable degree, not only of the very respectable gentlemen who, from no other than philanthropic and humane motives, have been induced to serve in the very onerous office of inspector, but of all the officers of the institution, and the affection and respect of every convict committed to his charge, towards whom his deportment seems to have been characterized at once by kindness and decision.

When this officer came with his wife to the penitentiary, unfortunately provision was made for the residence of his family, as it was for the residence of the families of other of the keepers within the walls. This arrangement, it appears, was opposed from the first by Mr. Wood, who wished to exclude all families from the penitentiary, he being, very properly, of opinion that it would be much better that the families of the keepers should reside elsewhere. The very respectable board of inspectors, it seemed, differed with him in opinion; at all events, as a present arrangement, and while the building of cells was in progress. They seemed to have been governed by a view to economy and convenience. Apartments under this arrangement within the front building were assigned to Mr. Blundin and his family, and he was permitted to board some of the under keepers, and persons who were engaged, either in that capacity, or in the work then going on in the penitentiary.

These apartments were as much the distinct residence of Mr. and Mrs. Blundin, being secured to them by contract with the board of inspectors; as would have been a residence elsewhere. After the family of Mr. Blundin was thus established within the walls of the penitentiary, she, it seems, was employed at a stipulated sum, to be paid

to her husband, to superintend and conduct a certain part of the cookery for the prisoners. Intimations and complaints against improper conduct on her part were, after she had been some time in this situation, made to one of the inspectors. This induced an investigation before the board of inspectors, which covered, for the most part, the same charges which were made before the committee. This investigation proved the great propriety of the objection made by the warden to the residence of the families of keepers and others within the walls, and in June following this investigation, the residence of Mrs. Blundin was removed from the penitentiary, she having been dismissed from all occupation in the institution from the time of that investigation.

As she had ceased to be employed there, her conduct no matter how improper, had ceased to be a matter of any concern to the public, except so far as it might be connected by proof, with the conduct of those who were still engaged in the economy and management of the Eastern Penitentiary. In this point of view a full and free enquiry into her conduct, while she resided in the institution, was permitted by your committee, and your committee regret to say that, so far as regards this woman, the evidence did go to prove very gross and improper deportment and practices, entirely unbecoming her sex and condition. The committee might, from the evidence, infer her guilt of the charge now under consideration, but as that point is no way material to any conclusion to which your committee could properly direct your attention, but in so far as it might be proved that the present officers of the institution had participated in it, the committee refrain from the consideration of this unpleasant point and pass to the only important enquiry was this conduct "known and participated in by the warden, one John Holloway and one Richard Blundin?"

Before the committee proceed to examine this question, as it affects the warden, it is altogether proper to state that your committee received evidence of the general good character of that gentleman. It is a well established principle affecting all investigations which, in their tendency, may be calculated to eriminate any individual, that such evidence shall be received, and that when the person accused can make out a general good character, it is strong and persuasive evidence, and in all cases of doubt, or mere suspicion should lead to a full and honorable acquittal.

On this point the warden occupied pre-eminent ground. For many years a member of the Philadelphia society for alleviating the miseries of public prisons -- a society which originated in 1776, and to which belongs the distinguished honor of leading the way in the amelioration of our penal code, and in establishing a penitentiary system on the principle of separate or solitary confinement; a member, also, for many years, of the board of inspectors of what is now called the Walnut street prison; his mind seems to have been devoted with much earnestness to the cause of humanity, and the improvement for this purpose of what is now appropriately called the Pennsylvania Penitentiary system. Witheut any other compensation or reward than "the



luxury of doing good," this gentleman devoted his time and means to this interesting, but to many, revolting subject. Not satisfied with the knowledge acquired in his own country, like the celebrated Howard, he visited the prisons of foreign countries, and their added to his already great experience.

Such untiring singleness of purpose in the pursuit of knowledge for alleviation of humane misery, and the improvement of the moral condition of mankind, without any selfish motive to actuate it, is certainly indicative of a sound head and a pure heart.

After the return of Mr. Wood, from Europe, his great reputation in this respect was well known, and when, in 1829, the Eastern Penitentiary was about to be opened to receive convicts, the inspectors with great earnestness pressed upon Mr. Wood the acceptance of the situation of warden which he now holds. After some hesitation and reluctance on his part, he yielded to the importunity of the friends of humanity, who were anxious to place under his direction an institution which would carry into full effect the great system so long urged by philanthropists, and to which Mr. Wood himself had been so much devoted. Messrs. De Beaumont and De Toqueville, commissioners appointed by the King of the French, to visit the penitentiaries of the United States, and who did visit those of the different states, speak in these strong terms of our warden.

"Among the superintendents of the American penitentiaries we have especially to mention Mr. Samuel R. Wood, director of the new Philadelphia prison—a man of superior mind, who, influenced by religious sentiments has abandoned his former career, in order to devote himself entirely to the success of an establishment so useful to his community."

Another gentleman, Dr. Francis Leiber, already known as a distinguished scholar and philanthropist, and for great knowledge of penal law, and the penitentiary system, as connected with it, and who has given to our language one among the best books that have been written on this subject; in speaking of Mr. Wood, says "I have visited many of the penitentiaries on this continent. I have not of course become acquainted with the wardens of other penitentiaries as well as I have with Mr. Wood, because I have resided here; but I never found a superintendent of any penitentiary of a more humane disposition, and clearer mind on all subjects of the penitentiary system, than Mr. Wood; I must add here that I have received from no one more sound practical knowledge of the penitentiary system generally than from Mr. Wood. I have for my part never become acquainted with a person whom I thought equally fitted for that station."

To this may be added the evidence of persons of the first respectability who concurred in their testimony to the high moral character of Mr. Wood, and with whom they had been intimate for years. And this evidence was not attempted to be contradicted by any one.

The committee would have yielded with great reluctance to testimony which went to compel the conviction of one who had hitherto been remarkable for his moral excellence and his humane concern for the

good even of the most abandoned. It would have been painful to have been driven to any such conclusion. But the committee were determined to permit no consideration of this sort to interfere with the severest enquiry. They therefore allowed a latitude almost without a limit, and they feel pleasure in declaring that it has not resulted in establishing against the warden any thing to tarnish the high character we have already referred to. We consider it unfortunate that Mrs. Blundin, of whom we have already spoken, was ever permitted to reside within the walls of the penitentiary; and perhaps to this circumstance most of the mischiefs complained of may be traced, but in considering whether a person of high character has been guilty with her, care should be taken to separate any infamy which may have been proved to be attached to her, from the consideration of the evidence of any such participation. No evidence was given to show practices and manners licentious and immoral on the part of Mr. Wood, nor of any such on the part of Mrs. Blundin, or any other person in his presence, and with his knowledge, and although a jealous mind might infer guilt from the smile of benevolence, with which the warden is wont to regard all persons, or from the fact that the employment of this woman in the house frequently brought them together, in the same more especially as she attended to his wardrobe, yet no rule of propriety or reason would justify any such conclusion.

As to Richard Blundin, there was no evidence which went to implicate him on this point, or to show that he had in any degree encouraged or promoted any improper conduct of his wife.

Of John Holloway, the clerk of the institution, evidence was given of improper language having been used in his presence, but not by him. It may be too that indiscretion may have betrayed this gentleman into a greater degree of familiarity with this woman than a delicate sense of propriety would justify; but the evidence as to this did not establish enough to countervail the evidence of general good character, which this gentleman adduced, or to make it proper under the circumstances for further notice from the committee.

Having thus disposed of the first charge, we proceed to the second: "Embezzlement and misapplication of public provisions, and public property, and of the public labor, &c."

The evidence on this charge related principally to two points, the first, the embezzlement and misapplication of the public provisions and property by Mrs. Blundin, with the knowledge and connivance of the warden; second, the use of the public labor, or the labor of convicts, or those employed by the State, for the use of the warden, without proper compensation having been made to the State.

On the first point the evidence did show that there was reason to believe that this woman had been in the practice of embezzling provisions, groceries, &c. and of applying them to her private use, but there was not the shadow of evidence which went to affect Mr. Wood with any knowledge of such conduct, much less to prove any participation in it. Notwithstanding the relation which subsists between Richard Blundin, and his wife, leading to the conclusion that he might

have known any impropriety on her part in this respect; yet, it is equally true that the evidence went to negative any such knowledge, and to evince that he was always careful to protect the public property against any improper use.

In regard to the second point under this charge, which presented an investigation of the alleged use of public labour for the private interest of the warden, without a proper compensation for it, evidence was given to show that the warden had become interested as the co-partner of other gentlemen in a farm, and in a manufactory for sawing marble &c. That certain iron, and wood work was done for these concerns in the Penitentiary. As to the former it was alleged that the prices at which it was charged, were below the prices at which such work could have been procured elsewhere. On this point there was contradictory evidence, and it did appear that the prices whether right or not were fixed, not by Mr. Wood, but by an other person. It was supposed that the carpenter work done for Mr. Wood, was done by workmen who were paid by the state, and of materials which belonged to the state, but it was shown by satisfactory evidence, that both these suppositions were unfounded, and that Mr. Wood could not be properly charged with any thing wrong in this business.

But although the committee are satisfied that on this point no criminality is imputable to the warden yet they have been induced by the evidence to consider of the propriety of prohibiting, in future, the warden and under keepers from being concerned in any other business or employment than the duties of their respective offices. There is an obvious propriety in avoiding the mingling of private accounts and business with that which belongs to the public. Independent of this, the time required for other pursuits, or the care which they might induce, tends at all events to divide attention which should be exclusively directed to a trust of so much importance, and delicacy. Setting aside the consideration of the temptations which arise from mingling private business with that of a public trust, to make the latter subservient to the former, it at all events gives occasion to suspicion, and reproach, calculated to impair public confidence. The committee therefore have thought proper to recommend a prohibition on this subject which is embraced in the bill herewith reported. With like views, but without intending to convey censure upon any one, the committee have judged that it will be proper to prohibit any work being done to order in the penitentiary for any of the inspectors or officers of the institution. After any work is done there can be no objection to purchases being made by them as by other individuals. The committee have therefore included in the bill reported a prohibition of such work to order.

The next charge is one of great magnitude, had produced much excitement in the public mind, and the investigation of it occupied much time. This charge was of cruel and unusual punishments, inflicted by order of the warden, upon refractory convicts, &c. This general charge was accompanied, it will be perceived, by the specification of two cases: 1. The case of Seneca Plumly, who, it was said, had been "tied up against a wall in the depth of winter, while

buckets of extreme cold water were thrown upon him, which partly froze on his head and person, and he was shortly after discharged as incurably insane." 2. The case of Matthias Maccumsey, in "whose mouth an iron bar or gag was so forcibly fastened, so that his blood collected and suffused upon his brain," and he suddenly died under this treatment.

It is assumed in this charge that the prisoners or convicts upon whom these punishments were alleged to have been inflicted, were refractory convicts; and this assumption was fully made out by the evidence. It must be remembered, that although our penitentiary system has for one of its objects the reformation of the convict, that its unfortunate inmates are men of idle habits, vicious propensities, and depraved passions. Requiring as it does that these habits should be changed, these propensities checked, and passions subdued, before the work of reformation can be commenced, it is plain that the first step is to produce obedience. This with many convicts, if not all, is a matter of much difficulty, requiring great firmness and discretion. Gentle means, although not without effect, are seldom sufficient of themselves to produce this object: and yet it must be produced, or nothing can be done. Hence it becomes necessary to adopt some punishment beyond that which is inflicted under the sentence of the convict, and which is essential to secure his quiet subjection to that sentence. To allow him a refractory disregard of the proper order of the institution, would be not only of great prejudice to himself, but would seriously affect those in whom a more proper frame of mind had been produced.

Our system requires not only labor, but solitude, which combined are calculated to bring about reflection upon past misdeeds, and their evil consequences. It will not do to allow the convict to interrupt that solitude by obstreperous noise, or to refuse to perform his work, or in any respect withhold the most implicit obedience to the order of the institution.

In all the penitentiaries in the United States, such punishments are resorted to. In many, the lash is used as the chief disciplinary means of exacting this essential obedience. This is the case at Auburn and Sing Sing, the great institutions of our sister state of New-York.—We have, however, for reasons not necessary here to be insisted on, but, as we think, sufficiently apparent, always rejected this punishment: but diminished food, the dark cell, deprivation of work, the use of the strait jacket, and the gag, have been resorted to with us, rather from the necessity of the case, than upon any well-defined legal rule. General power is conferred upon the inspectors "to make such rules for the internal government of said prison, as may not be inconsistent with the principles of solitary confinement," "if they, on conference, find it necessary;" but they have not exercised this power. In most penitentiaries, rules for this purpose do not seem to have been adopted. The difficulty of forming such rules must occur to every one, and hence, no doubt, it is that, for the most part, a large and liberal dis-



cretion is vested in the warden or superintendent ; which, after all, must be the case under any system of rules which could be devised.

It was well known when the present warden of our Eastern Penitentiary was appointed, that he united to great experience, a well established character for humanity, firmness and discretion, and it was believed by the board of inspectors, that he would require no other guide in the discharge of his important and responsible duties : for this reason no such rules were drawn. The warden was left to his own discretion, and to regulate that, he of course would naturally refer to the practice of other institutions of a similar nature. In considering this charge and specifications it is material that this should be kept in view.

The specification in the case of Plumly, represents him as having been discharged shortly after he was dacked, "incurably insane," leaving as an inference that his insanity was occasioned by the use of the cold bath. It was well ascertained that he was insane at the time he was committed, and that no change in this respect, took place while he was in the Penitentiary. Was this punishment of this unfortunate prisoner cruel and unusual ? It was certainly proved that many buckets of water had been poured upon him on a very cold day, and your committee cannot avoid the conclusion, that, under the circumstances, it was indiscreet ; but the transaction was deprived of all evidence of cruelty, which always implies intention, by the evidence which was given. It was clearly proved that the use of the cold shower bath is frequently employed for insane patients, not only as curative, but disciplinary means, in the best institutions for this unfortunate class of men in the city and vicinity of Philadelphia. One instance of a similar application of cold water was remarkable ; it occurred in the insane hospital belonging to the society of Friends, so distinguished for their enlightened humanity.

Thirteen buckets of cold water were in that case poured out on one patient, in cold weather. It was intended to cure him of filthy habits, and it effected it. This was an object in the case of Plumly ; and no doubt, the knowledge which the warden had on the subject, induced him to resort to the same means. This punishment could not then, with any propriety, be called unusual, and the very fact, well known, that it was in familiar use in such cases, goes far to demonstrate that its use was without cruelty, and only to be condemned on account of the indiscretion of using it at a time when the weather was so cold. No evidence was however given, to prove that any ill consequence to the convict followed. Whether this punishment had been directed to be inflicted by the warden on that day or not, was the subject of contradictory evidence.

2. It was in proof that an iron gag had been placed on the convict Maccuinsey, whose conduct on that, and on many former occasions, had been very outrageous. In a short time after it was put on, it was discovered that he was becoming insensible, and it was taken off ; but every effort to revive him proved ineffectual, and he died.



This unfortunate circumstance naturally excited much feeling, in which every one seems to have participated, and induced some to suppose that the death of the convict was occasioned by the use of the gag. This impression seemed to have gained ground, and it was upon this that the grave specification under consideration was made.

It was in full proof that the use of the gag as a means of punishment, was not unusual. It appears that it has been employed in the navy of the United States; that it had been used in the Walnut street prison, and it had also been frequently resorted to in the Eastern penitentiary, in the case of other prisoners, and in the case of Maccumsey himself, without any injurious effect having been produced. It was not therefore an "unusual punishment," and it may be inferred from this, that it had not been considered a cruel punishment. In support of this position, it was also proved that the highly respectable gentleman who holds the office of physician in the institution, who is alike distinguished for his humanity, intelligence, and science, had so far considered that it was not improper, and that he had suggested at some period before the death of Maccumsey, an improvement in the mode of attaching the instrument upon a refractory convict.

This evidence certainly goes far, if it does not entirely relieve the punishment in this case from all intentional cruelty on the part of those who had inflicted it.

It was still important in the investigation of this charge to ascertain whether the death of Maccumsey, had in fact been occasioned by the use of the gag. To show that it was not, evidence was introduced of the post mortem examination of the body of the convict. A dissection of his head disclosed very clearly that he died of a disease of the brain. The indications which were presented in this dissection, proved that this disease was a chronic disease, or one of long standing which terminated at the time the gag was put on him, in apoplexy, and occasioned his death.

This conclusion too was fortified by the many symptoms of insanity which were frequently discovered in his previous violent and unreasonable conduct.

Evidence was also given by very many surgeons and physicians, professors in our medical colleges and others; whose reputation is well known not only throughout our own country, but abroad to prove that the gag as applied was not naturally calculated to produce death. The anatomical construction of the head and neck of the human body is such that it could have produced neither strangulation, or a stoppage of the circulation of the blood. The conclusion in which these gentlemen concurred, and with which your committee were satisfied, was, that although the application of the gag was a coincident circumstance, it was not "connected with the unfortunate event as cause and effect." It is true, that when a tendency to disease of the brain exists, any excitement may precipitate the disease to a fatal result. Extraordinary emotions of joy or anger, or the like, have not unfrequently produced death in such cases. And it may be a subject of speculation, whether the use of the gag in the

case under consideration may not have been an exciting cause of the disease, which had been in progress, and which was brought to full maturity while the gag was on. But such speculations must of necessity leave the question still in doubt, nor would the solution of it in any degree tend to any proper conclusion as to the conduct of the individuals concerned in the transaction. It may be also remarked, that if it should be admitted that the use of the gag had been the exciting cause of the consummation of the pre-existing disease, it could not be taken as any evidence of guilt on the part of those who applied it, for the same thing might have been produced by exciting the anger, or any other violent emotion or struggle on the part of the convict, by any other instrument or means which would have restrained any part of his person, or produced such emotion or struggle.

The committee have much satisfaction therefore in dismissing the consideration of this grave charge with a full acquittal of the persons implicated from all criminal intention on their part in reference to it. The committee however are of opinion that there was great propriety on the part of the warden in discontinuing the use of this instrument; which he did from the time of the death of Maccumsey. They consider it too severe, and that it should be avoided for the future; although it may be that this opinion is derived from the unfortunate event that attended its use in the case of Maccumsey.

The evidence given did not satisfy the committee that there was any thing improper in the use of the straight jacket. It does not seem in any case to have produced injurious effects or to be calculated to produce any, while it has often served a good purpose in bringing to tranquility, and subjection the refractory and violent.

The committee are aware of the difficulty of establishing rules for the regulation of prison discipline, and that under any rules which may be formed there must still be a large amount of discretion vested in the warden; they are, however, of opinion that as far as it is practicable they should be laid down. They might embrace some general classification of offences against prison discipline, and some designation of the punishment to be inflicted. By the act of 23d of April, 1829, as we have said, the board of inspectors "have power if they on conference find it necessary, to make such rules as may not be inconsistent with the principles of solitary confinement."

By this act it is left to their discretion, but they have in fact never exercised it. The committee are of opinion that it should be imperative upon the board to frame such rules, they have, therefore, included in the bill which they report a provision for this purpose.

The committee have already mentioned that an investigation, occupying nearly the same grounds as that conducted by them, was had before the board of inspectors. It appeared that in that investigation several of the under keepers or overseers were witnesses, and that after it was closed the warden with the approbation of the board determined that some of them should be discharged.

It appeared that differences had arisen among the officers of the institution, a want of mutual confidence existed, and there were other

causes such as the expression of infidel opinions, a knowledge of abuses and a neglect of communicating that knowledge, which affected some of them, and which induced this measure. The want of mutual confidence alone would be enough to make such a course indispensable. The occasion does not require any expression of opinion in reference to the conduct of those who were dismissed, but the fact itself suggested to your committee the possible danger of abuse of the absolute right given the warden by the act of 1829, "to dismiss whenever he thinks proper" the under keepers or overseers. The committee think that it would be more appropriate to allow the warden to nominate those officers to the board, by whom they should be appointed, and that they should be removable from office by the board of inspectors alone; and they have made this a part of the bill which they propose. It is right to add that the warden very properly submitted to the board the propriety of dismissing the overseers on the present occasion.

The committee were strongly persuaded of the very onerous duties which the inspectors of this institution were required to perform, without other compensation than that which they derive from a commendable spirit of humanity. Five is the number of these inspectors as the board is now constituted. This number was no doubt sufficient when the institution was first established, but from the increase of convicts, who on the 31st of December last, numbered two hundred and eighteen, the committee are of opinion that the duties of the inspectors cannot be performed by the present number, without a greater sacrifice of time on their part, than it would be reasonable to expect from them. The committee too are persuaded that their duties are of great importance, and they feel desirous that the board should be so organized as to secure, as far as practicable, the exact performance of them. With this view the committee propose that the number of inspectors should be enlarged to nine, three of whom should be appointed annually by the Supreme Court, so that each inspector shall serve three years, and they have reported a section for this purpose in the bill which accompanies this report.

The duties of the physician of the penitentiary are very arduous, and are constantly increasing as the penitentiary fills up with convicts. Humanity requires that this officer should always be, as he now is a man of learning and skill. The committee think that to secure the continued service of such a man as Dr. Bache, the salary, \$ 500 per annum, is not adequate, and that it should be increased. If a fair and liberal compensation be not given, for a proper person to fill this department, it cannot be expected that such a one can be procured to render the services required from the physician by the act of Assembly, and which the increase of the convicts in the institution must necessarily augment.

The committee also present for consideration, a section in the bill which provides for the appointment, by the physician, of two assistants, who are not to receive any compensation. The advantages of improvement which the practice in the Penitentiary would allow to young physicians, would no doubt induce gentlemen of this liberal profession, who are ever ready to embrace such opportunities, to accept these



ments, as they do similar appointments in other like public institutions in the city.

We have before adverted to one of the great and humane objects of our institution. Other countries consign the unfortunate offender against their penal laws, to death, or hopeless infamy, from which no returning footsteps are to be traced: we, on the contrary, while we punish to deter from the commission of crime, never abandon the hope of reclaiming the wretched offender against the law. We place him in the *locus penitentiae*, and we seek to present to him motives to return to the paths of virtue. While he is made to feel the vengeance of the law, he is taught to know its mercy, and to learn to sin no more. A judicious religious instructor is very important in this work of reformation. Christian instruction, bringing to the deluded sons of vice, in the solitude of their cells, the wisdom of the purest morals and the consolations of religion, must always prove a powerful auxiliary (if indeed it can be at all accomplished without it,) in bringing the convict back to a proper regard for the obligations which rest upon him, in all the relations of life.

It is obvious that reformation of convicts independent of the considerations of humanity, is of great consequence in a political point of view, as it tends to preserve society from the dangerous contamination of a hardened offender, who returns to its bosom but to infest it, and from the heavy expenditure which crimes in every way directly and indirectly occasion. Impressed with the importance of this subject, your committee conceive that it will be altogether right to employ a religious instructor, and give him such compensation as may be necessary to insure the services of such.

The gratuitous exertions of clergymen, who now at intervals, when their duties permit, devote a portion of their time to the inmates of the prison, is worthy of all praise. But beyond the valuable, but precarious services of excellent men, who are only permitted by other duties occasionally to engage in this work of humanity, much is required to be done by a regular and steady system of instruction wisely conducted.

We have therefore presented this subject to the consideration of the Legislature, by a section which authorizes the board of inspectors to employ a religious instructor.

The committee find that in New York, a chaplain is appointed for the penitentiary, and in the late report of their commissioners, to the Legislature, it is recommended that "the duties of the chaplain should be extended and defined by law, an office provided for him in the prison, and that he should be required to devote his entire time to its concerns."

The fourth charge in its general terms covers all the ground of the first, but the specifications connected with it opened other points of enquiry than those suggested by the first.

They principally referred to entertainments given within the penitentiary. The occasional entertainments or dinners given by Mr. Wood, in his apartments, which are distinct from the cells occupied by the

convicts, on public occasions, when the institution was visited by committees of the Legislature or public visitors, were sanctioned by the board of inspectors, and he could not therefore be considered as censureable on that head; nor do the committee conceive that there is impropriety in the exercise of the rites of hospitality by the warden, when this is done without in any degree effecting the good order of the institution. The penitentiary is for the punishment of convicts, and those who occupy apartments within its ample walls, who are there as officers of the institution, cannot properly be denied social intercourse with their friends, if such intercourse is conducted with propriety.

On one occasion, Mrs. Blundin it seems, in her apartments, had what is commonly called a quilting frolic, at which dancing was permitted. As this woman was long since removed from the institution, and the desire of the warden that families should not be permitted to reside within the walls, had been long since yielded to by the board of inspectors, the enquiry into her conduct on this occasion, or the propriety of the entertainment was not a subject of much importance.—While the committee therefore do not hesitate to condemn the one, and the other, they are not called upon to do more than express this opinion, and their entire concurrence in the propriety of the warden's views as to the residence of families within the walls, which, if adhered to will avoid the recurrence of that which they do not hesitate to disapprove.

The presence of some convicts on such occasions they consider improper, but this will more appropriately fall under the consideration of the next charge preferred.

“Fifth charge, a frequent and illegal practice in the treatment of convicts by the warden, of departing from and in effect, disregarding the sentences of the courts of justice, &c.”

It does appear that convicts had been frequently employed in cooking, in working, in baking coal, in making fires, occasionally as waiters, and in work connected with the building and construction of cells, out of their cells. And some convicts are now employed, as black smiths, which requires that they should be constantly while at work associated, each with an individual not a convict, who aids in the work. For some time before the investigation commenced by your committee, all convicts had been returned to their cells, and they ceased to be employed as described, except only such as are engaged as blacksmiths in the manner stated, one of whom owing to his great skill as a workman, is still engaged in work connected with the building of new cells, which as your committee understood sometimes required that he should be employed out of his cell.

All this was with the knowledge of the board of inspectors, and as far as the committee could ascertain, with their entire approbation.

Care seems to have been taken in this employment of convicts out of their cells, to keep them entirely separate from each other. This was certainly strictly enjoined by the warden, and if it was in any



case departed from, it was the result of accident, not design, or grew out of the nature and manner of the employment of the convicts.

Economy seems to have been the chief motive for this departure from the spirit and letter of the law ; and besides this, as the system, in the extent to which it was proposed to be carried in the new penitentiary, was considered by many an experiment, and there were not wanting many who entertained the belief, that separate and solitary confinement in cells, even with labor, would produce fatal consequences upon the minds and bodies of the convicts, it appears to have been considered by the board proper to commit to the enlightened discretion of the warden, well known for his zeal in advocating the system, and his extensive experience on the subject, the privilege of such relaxation as would ensure the system the fairest chance for success. In permitting this liberal exercise of discretion by the warden, the board confided it to one for whose enlightened experience they had entire respect—one whose laudable ambition it was to identify his reputation with the great triumph in the cause of humanity which the full success of the system would realize. Some of the convicts employed in the way described, were apparently in delicate health, and others, by good conduct, had acquired a large share of the confidence of the officers of the institution.

But however the committee may be disposed to respect the motives for this departure from the law now under consideration, they do not consider it at all justifiable.

It is well remarked by the distinguished commissioners of France, Messrs. De Beaumont and De Toqueville, that "application to labor and good conduct in prison, do not procure the prisoner any alleviation. Experience shows, that the criminal who, whilst in society, has committed the most expert and audacious crimes, is often the least refractory in prison. He is more docile than the others, because he is more intelligent ; and he knows how to submit to necessity, when he finds himself without power to revolt. Generally, he is more skilful and more active, particularly if an enjoyment, at no great distance, awaits him as the reward of his efforts ; so that, if we accord to the prisoners privileges resulting from their conduct in the prison, we run the risk of alleviating the rigor of imprisonment to that criminal who most deserves them, and of depriving of all favors those who merit them most." The committee are not without some inclination to believe, from the evidence, that the truth of these observations is well illustrated by the cases of indulgence which occurred in the Eastern Penitentiary.

Some effort was made to sustain the propriety of the course pursued in these cases, by a construction of the act of the 23d of April, 1829, which it was intimated warranted it. It is true, that the language of that act is "shall be sentenced by the proper court to suffer punishment by separate or solitary confinement at labor," but a consideration of the whole scope of that act, a careful attention to the language used here, and the very plan upon which the penitentiary is constructed, independent of all other circumstances, will lead to the conclusion, that the punishment for which it provides was

not only separate as it regards the convicts themselves, but solitary confinement at hard labor; precluding the idea of permitting intercourse beyond the absolute necessity of the case, with other persons who are not convicts. It is true that the disjunctive conjunction is used, but it is not used to make a distinction between two kinds of punishments in the alternative, either of which might be used at discretion, but the words "separate or solitary," are employed as descriptive of the nature of the only punishment which by the act, is established. That is, the punishment is to be not only separate but also solitary.

It is the profound and noiseless solitude of the penitentiary cell, from which alone we can hope for that deep reflection and penitential sorrow, leading to a moral change in a mind and disposition almost wholly cancerous and depraved, with lawless passions, licentious habits, and obdurate propensities. Such a mind must be thrown back upon itself, and left without that delusive prop which wicked men derive from intercourse with their fellow men, more particularly, if that intercourse should be with those who want the extreme prudence and discretion, to say nothing of moral qualifications, which can in any case make such intercourse profitable to the unfortunate convict.

The very intelligent and learned gentleman already spoken of, Dr. Leiber, who has so well repaid his adopted country, by the excellent works he has written of some of her best institutions, said on this point—"I conceive the characteristic principle of the Pennsylvania penitentiary system to be solitary confinement, with labor: it is not possible, compatibly with my idea of the system, to have labor without solitary confinement, unless by way of exception, which would prove the rule. I should consider that letting prisoners out of their cells daily, to work in the kitchen, or to labor in the yard among laborers, or together, would be an infringement on what I consider the system to be."

If we refer to the history of this system, which has immortalized the jurisprudence of Pennsylvania, placing her far above every other community in the scale of humanity and wisdom, at all events as regards her penal laws, we shall find that not only separation, but solitude, was in the very outset considered the chief means of effecting the great object, the reformation of the criminal.

The prison society, "to the unostentatious and indefatigable labors of which we are indebted" for the change which was accomplished in the management of jails in Pennsylvania, "in 1788, when the supreme executive council called on the society, by resolution, for information concerning the state of the prison, and solicited advice on the course necessary to be pursued and the most salutary measure to be adopted," made report, which "closed with this memorable sentence:"—"On the whole, as a matter of the utmost moment to the well-being, safety, and peace of society, as well as of the greatest importance to the criminals, the committee think it their duty to declare, that from a long and steady attention to the real practical state, as well as the theory of prisons, they are unanimously of opinion, that

SOLITARY CONFINEMENT, and hard labor, and a total abstinence from spiritual liquors, will prove the most effectual means of reforming these unhappy creatures."

In 1790 and 1794, the Legislature made the initial steps towards the introduction of this system. It is well known, however, that it was but very partially carried into effect—the building erected not permitting this to be accomplished: the great expense of constructing a suitable building for this purpose, no doubt operating to deter from the entire execution of the plan. But although these difficulties existed, cases did occur "in which the prisoner immediately on admission was conducted to his cell, and remained in it until his discharge from prison. The cases thus treated were the only instances of reformation which continued throughout the lives of the individuals, as far as could be traced and ascertained by the anxious and inquiring friends of the system."

The principle so long ago advanced as an essential part of the reformed penal code of Pennsylvania, has been constantly kept in view, and again and again urged by the friends and advocates of the system, until at length the Legislature of our State, in the years 1818, 1821, determined to make the noble effort, which resulted in the erection of the Eastern and Western Penitentiaries, at Philadelphia and Pittsburg, where this fundamental principle of the system could be fully tested. The history of this question is given in the very able letters of that eminent philanthropist, Roberts Vaux, to the celebrated William Roscoe, to which reference may be made with profit by those who feel an interest in this subject.

When, then, it is well understood that entire seclusion was thus considered an essential part of our system, and the eastern and western penitentiaries were constructed for the very reason that those already in existence were not adapted to the purpose, it is altogether plain that it was the intention of the Legislature, by the act of 1829, to enjoin separate and solitary confinement of the convicts. The committee therefore consider the employment of convicts, in the manner stated, as inconsistent with the law and the characteristic principle of our penitentiary system.

It is however but fair to say that while the building of cells was in progress such departures from the law cannot be considered in the same light as if this excuse did not exist. It seems too from evidence given to your committee, that similar departures have been permitted in the western penitentiary, under similar circumstances. The committee do not mean to condemn the employment of a convict of great skill in certain work, which is required in cell building, and which requires him to be out of his cell under proper restrictions; that may be considered as justified by peculiar circumstances: nor do they mean to be understood as expressing any disapprobation of such indulgences as are directed by the physician, these are sanctioned by the act of assembly, nor is there any thing objectionable in such intercourse with the convicts as may be necessary for their instruction in the occupations in which they are employed, this of course is unavoidable, but should



be carefully guarded, and the committee heard no complaint from any quarter on this point. But there is a subject connected with this branch of the case which requires to be well considered. We allude to the employment of convicts in handicrafts which require constant association while at work with an other individual not a convict, as for instance blacksmith work, at which several convicts are now so employed. The committee cannot avoid the conclusion that however profitable, in a pecuniary point of view, it may be, it is nevertheless at variance with the fundamental, and essential principle of seclusion upon which the excellence of the whole system depends. Perhaps it may be expedient owing to the great saving which such employment of the convicts produces to permit it to continue until their work is no longer needed in the building of new cells, but when this takes place, it should be altogether abandoned. It is proper here to say that all the forebodings of those who have opposed our system on account of its essential principle at which we have glanced, have been fully proved to be unfounded. Neither have individuals "been put to death by the superinduction of diseases inseparable from such mode of treatment" nor has the mind of any been caused by it "to rush back upon itself and drive reason from her seat." No such fearful consequences have been produced, and although no doubt this punishment is calculated, and very properly to inspire well grounded terror in the minds of evil doers, it does not seriously affect the bodily health or sanity of the convict.

The committee have thus considered in their order the charges preferred; they have now to proceed to some other points which become incidentally subjects of attention.

Some evidence was given to show that some of the under keepers had been paid as laborers out of the cell building fund, instead of being paid as officers of the institution out of the penitentiary fund. The committee are not warranted from the evidence in the conclusion that there was any intentional impropriety in this, inasmuch as the payment itself was proper, and both funds were provided by the Commonwealth; but care should be taken for the future, to permit no consideration of convenience to interfere with a proper, and exact separation, and adjustment of all accounts of the expenditures of the institution.

An other topic became incidentally the subject of consideration before your committee. It seems to have occasioned some slight excitement in the immediate neighborhood of the institution, it is known to have created much more in an other state, and it seems to be worthy of a passing remark.

We allude to a supposed injurious effect which the labors of the convicts in the mechanic arts, has upon the labors of the citizen mechanic. The supposition has been that the product of convict labor works this injury by competition with the product of the labor of the mechanic. If this supposition was well founded, if in point of fact this highly respectable, and all important class of the community were indeed injured by the mechanical labor of the convicts in our penitentiaries, it should certainly be a subject of anxious enquiry by the Le-

gislature how this might be avoided. But your committee were satisfied that the supposition is without serious foundation. This may be readily perceived to be correct by a simple comparison between the number of convicts engaged in mechanic arts, and the number of citizens in the same pursuits. The prices at which articles manufactured in our penitentiaries are sold, are not variant from those at which similar articles made elsewhere are disposed of. Care should of course be taken that this should always be the case, as it would be extremely improper to reduce those prices so low that an injurious competition in this respect should take place. In New-York, where the excitement on this subject had reached a dangerous height, commissioners were authorized to inquire into it, who made an able report on the subject to the Legislature of that state, at its present session. They attribute any evil which may have been produced by the mechanical labor of convicts in their penitentiaries, principally to the law which authorized the hiring of the labor of the convicts to individuals, which they condemn. Under this law, contracts were made for this labor for prices so low, that in some branches the individuals who contracted for it have been enabled to undersell those who are engaged in the same branches of mechanic business, and who were without this advantage. This practice not being allowed with us, of course this source of complaint does not exist here. But even in New York, it is strongly demonstrated that any injury which has been done has been greatly exaggerated.

But if it should be admitted that the small amount of convict labor which is employed in our penitentiaries should produce some slight effect by competition, an appeal might well be made to the justice and humanity of a body of men who, in this country, have been remarkable for their enlightened patriotism and philanthropy. In the first place, it must be considered, that without labor the unfortunate convict would be driven, in solitary confinement, to madness or death; but if he escaped a termination of his career in a manner more cruel than capital punishment, he would be returned to society, perhaps enfeebled by indolence, so corrupting in itself, and not only without the inclination, but without the ability to gain an honest livelihood, even were he so disposed. He would then almost certainly resume his vicious pursuits, and commit fresh depredations upon society, and increase the amount of crime, in itself much more expensive to the community and injurious, in this respect, than all the evil that could be produced by convict labor, no matter how injudiciously employed.

Another reflection must also present itself to every considerate man. An immense expense is brought upon the community by the construction of our Penitentiaries and the maintenance of them; this has been charged upon all classes, the farmers, the mechanics, and all others. Justice requires that the convict should by his labor make some compensation for his depredations upon society, and their consequences, and justice also requires that his labor should, at all events contribute



to support him, and relieve the community of a portion of the great expense to which it is put to maintain and punish him.

Your committee cannot advise the repeal of the 2d section of the act of the 15th August, 1834, which repeals the 3d section of the act of 1829, authorizing grand juries of the cities of Philadelphia and Pittsburgh, to have access to the prisoners, in the Eastern and Western Penitentiaries. We have already shown that solitude is essential in our system of punishment. To suffer the prisoners to be visited by many individuals, some of whom might be injudicious persons, would be in a great degree to disturb this necessary solitude. Under the act of 1829, the grand juries of the courts of the city and county of Philadelphia, were permitted to visit the convicts. The court of Oyer and Terminer holds one, the court of Quarter Sessions four, and the Mayors Court four sessions in each year, in the city of Philadelphia: the grand juries of these courts may therefore, in one year, number two hundred and seven persons, who under this act were permitted to visit each prisoner, and this besides the official visitors authorised by this act.

It must strike every one that the visit of so many persons must prove injurious. Your committee have however thought that it would not be without advantage, to permit a portion of such grand juries to visit the convicts; they therefore report a section in the bill which they propose to provide for the appointment, by the court of Oyer and Terminer, of the city and county of Philadelphia and the county of Allegheny, at each term, of five persons out of the grand jury, whose duty it shall be to visit the Eastern and Western penitentiaries, and make report to the court. They also propose to make the District Attornies, of the United States, for the Eastern and Western districts, official visitors, inasmuch as convicts under the laws of the United States are permitted to be imprisoned in these Penitentiaries.

There is a subject of much interest connected with our Penitentiary system, which, although not precisely within the inquiries with which your committee were charged, yet is of so much importance that they cannot refuse to consider it: this is the exercise of the pardoning power, by the constitution, vested in the Chief Executive Magistrate. Our system of criminal jurisprudence is exceedingly mild when compared with that of other countries; your committee think that it is wisely so: there can be no question that a system of mild punishments, which are always certain to be enforced, are the most effective: it is the certainty of punishment, which stands instead of great severity, to deter offenders from the commission of crime; if however, punishments are not only mild, but uncertain; or in other words, if these mild punishments are liable to be frequently set aside by the exercise of the pardoning power, their effect in preventing crime must be greatly diminished; but this exercise of pardoning power, has an injurious effect upon the convict himself; your committee found, among the convicts whom they visited, many whose minds seemed to be occupied with the hope of pardon. The committee cannot better express their views on this subject, than by introducing from the valuable preface of Dr. Leiber to the work of Messrs. De Beaumont and

De Toqueville, an extract from the report of Mr. Dermont, to the representative council of Geneva, which expresses in strong and convincing terms the proper views on this subject.

“It may be laid down as an incontestible principle that in matters of penal justice, I was going to say, in penal pharmacy, every thing which diminishes the certainty of punishment is evil; every punishment which is not fixed, which floats between fear and hope, is a punishment badly contrived. The causes of uncertainty between the law and its operation, are already but two numerous; if this is an inevitable evil, it ought to be reduced to its narrowest limits; but what shall we think of a law, the object of which is to render the punishment uncertain! and this is nevertheless the result of a tribunal of pardon, open to the petitions of the prisoner during the whole term of his imprisonment. We should know man very imperfectly were we not aware of the readiness with which he takes his wishes for hopes, and his hopes for probabilities. I agree that a convict wishing for pardon, will take care not to create himself difficulties by acts of insubordination or violence; I allow that he will pay attention to his words and behaviour: but it is a fact, that this idea, always present to his mind, causing a disturbed feeling of anxiety and expectation, will absorb and prevent him from being resigned to his situation, and following his labour with reflection and calmness. He feels like an indigent person, who having taken a lottery ticket, has his imagination absorbed by dreams of success, and fears of misfortune. It has been observed that prisoners, after having been unsuccessful in their petitions for pardon, become more calm and resigned to their situation and duties as soon as their fate was fixed. I owe this interesting observation to our jailor. Thus for the double end of increasing the certainty of punishment, and of making it more subservient to moral correction, this indefinite recourse to pardon ought to be abolished, and a fixed character be given to it.”

The moral improvement of the prisoner must depend upon a calm resignation on his part, until that is obtained there will be no hope of salutary reflection on his past life, and no fixed resolution to become a better member of society. While his mind is constantly agitated by alternate hopes and fears, hopes of pardon, and fears that he may not obtain it, he cannot become tranquil.

But how to restrain this pernicious evil, or how to regulate the exercise of the pardoning power so as to restrain it, is a question of more difficulty. Every executive must feel, and know, how hard it is to exercise this power properly. He must feel that he is exposed to importunities the most urgent, and persuasions addressing themselves to the feelings of compassion very difficult to resist.

Besides he is liable to be imposed on by false representations of persons who seek pardons without any regard to the propriety of conferring them.

The constitutional power conferred upon the Governor “to remit fines and forfeitures and grant reprieves and pardons” cannot be restricted, but it is within the competency of the Legislature to provide

the means of giving such notice of an application for a pardon as will give to those who are acquainted with the case, an opportunity of canvassing the propriety of granting it. With this view we have introduced into the bill herewith reported, a section which provides that in case an application is made to the Governor for the pardon of a convict, he may cause an advertisement of such application to be inserted in a newspaper printed in the proper county, once a week for six weeks together, to give notice to those who may choose to object to the pardon, and that such advertisement shall be paid for out of the county funds.

Every Executive would feel himself bound in any case where he supposed that it might be proper to grant a pardon, to have such notice given, and if it were given, an opportunity would be afforded to make him fully acquainted with the facts of the case. If upon the application itself he was satisfied that no pardon should be granted, he would not of course make such advertisement. The committee think that such a provision will have a most salutary effect, and will most probably control the abuse of the pardoning power, which has so often occurred under every administration of our state government.

The committee cannot close this report without an expression of their entire satisfaction with the very faithful and able manner in which the investigation was conducted on the part of the Commonwealth, by the Attorney General.

Although it occurred at a time when several courts in which the Attorney General had business, were in session, and it was continued with but little interruption for more than five weeks, during which the committee set, generally speaking, the entire day; this gentleman at a great sacrifice of time, and no doubt of business, attended the laborious sittings of the committee, and conducted the investigation.

It will of course be proper to make him a suitable compensation for his services.

The committee accompany this report with some interesting and sound views on some of the points considered, communicated by Dr. Leiber, to which reference may be had with advantage.

In conclusion the committee cannot refrain from expressing their high admiration for the institution, the economy and management which has been the subject of their examination, nor can they avoid the cordial belief, that it is calculated in an eminent degree, and beyond every other institution of the kind, to attain the great objects of penitentiary punishment, the prevention of crimes, and the reformation of offenders. To Pennsylvania may be truly said to belong the honor of having been first to suggest this benevolent system, which she has carried to greater perfection than any other government. A system which has been adopted with more or less success by her sister states as they have more closely or remotely adhered to its great principles, a system to which a decided preference has been given over every other by distinguished missions for the examination of it from abroad and which may be truly said to be the admiration of the philosopher and statesman in every part of the civilized world.

Cultivating as we should a just state pride of every superiority in moral or political excellence which characterizes us as a people we should remember the obligations which it imposes upon us still to be foremost to maintain and increase it.



### A SUPPLEMENT

To an act entitled "A further supplement to the act entitled An act to reform the penal laws of this Commonwealth."

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the judges of the Supreme Court of the State shall, at the first term of any Supreme Court which shall be held in the eastern district, after the passage of this act, appoint nine taxable citizens of Pennsylvania, residing in the city or county of Philadelphia, to be inspectors of the Eastern State Penitentiary, three of whom shall be appointed to serve one year, three two years, and three three years, and until their successors shall be appointed; and the said judges shall annually thereafter appoint three such taxable citizens as is aforesaid, to be inspectors in the room of those whose office expires, so that one-third of the said board of inspectors shall be annually appointed to serve for three years; and in case of any vacancy, occasioned by death, resignation or refusal to serve, or otherwise, the same shall be supplied by said judges as soon as conveniently may be.

Section 2. The said inspectors shall form a board, and shall do and perform all things which by law, the board of inspectors of the said penitentiary are now required to do and perform, and they, and the board of inspectors of the Western State Penitentiary, respectively, shall, within six months after the passage of this act, make such rules for the internal government and regulation of the discipline and good order of the said penitentiaries, as may not be inconsistent with the principles of solitary confinement, as set forth and declared by the act to which this is a supplement, and they shall have power to alter the said rules from time to time, as they may judge best for the good government of the said penitentiaries.

Section 3. The warden shall, by and with the advice and consent of the board of inspectors of the Eastern State Penitentiary, appoint the under keepers or overseers of the same, who shall be dismissed only by the board of inspectors.

Section 4. The physician for the institution shall have power, from time to time, by and with the advice and consent of the board of inspectors, to appoint two assistants, and remove them when he thinks proper so to do, but the said assistants shall receive no compensation for their services.



Section 5. The board of inspectors shall appoint, from time to time, a religious instructor of the prisoners, and fix his salary, and he shall do and perform all the duties enjoined upon him by the act to which this is a supplement.

Section 6. The court of Oyer and Terminer held in and for the city and county of Philadelphia, shall, at each successive term after the passage of this act, appoint five of the grand jurors empannelled at that term, who shall visit the Eastern State Penitentiary, and during such visit have the power and authority of official visitors, and they shall make report of such visit to the said court: the district attorneys of the United States for the eastern and western districts of Pennsylvania, shall be official visitors of the Eastern and Western State Penitentiaries.

Section 7. No warden, under-keeper or overseer of the Eastern or Western State Penitentiaries, shall at any time be concerned or employed in any other business, and if he should become so concerned, he shall be dismissed from office.

Section 8. No work shall be done by the convicts for and to the order of any inspector, warden, under-keeper or overseer: Provided however, That this shall be understood not to prohibit the purchase by any officers of any article made in the said Penitentiaries for sale.

Section 9. The Governor may cause notice to be given of any application for a pardon of a convict, by an advertisement published in the county in which the said convict was convicted, or, if no papers be published therein, then in a newspaper published nearest thereto, once a week, for six weeks in succession, the expense of which notice shall be paid by the commissioners of such county in which the convict was convicted, out of the county funds.



PHILADELPHIA, January 22, 1835.

Dear Sir :

In compliance with your request, that I should reduce to writing several views on our penitentiary system, which I had stated in conversation, I intend briefly to give my opinion upon some prominent points relating to this important subject. I am obliged to write in a hurry, and I trust you will excuse all deficiencies in the *externals* of the following remarks.

My views respecting the great and essential advantages of the Pennsylvania penitentiary system over the Auburn system, and its moral operation have been fully stated in the introduction and appendix to my translation of the work on the penitentiary system in the U. States by Messrs. De Beaumont and De Toqueville. I have had no reason to change my opinion, as given there; on the contrary, each farther observation and continued inquiry into the the practical operation of our system, have confirmed my views, and more strongly convinced me of its excellence. I may therefore be permitted to refer you to



that work ; I am unable to express my views better than I have done in that book.

I. The principle of the Pennsylvania system is *solitude with labor*. Solitude is as necessary as labor ; labor as indispensable as solitude. Solitude is necessary for five reasons :—

1. It prevents contamination, and affords an assurance that the convict, at any rate, does not leave the prison worse and more hardened than when he entered.

2. It forces, more than any other means, to reflect. Solitude is a most powerful moral medicine ; and yet powerful without being cruel. Most criminals have become such from thoughtlessness : make them reflective, and you have gained a very great point.

3. It prevents the convict from being known by his fellow prisoners, and thus gives him a far greater chance of living honestly after the expiration of his imprisonment than any other system.

4. It affords a kind of punishment which, though of a stern character, as it ought to be, avoids all excitement in the criminal, and does not irritate anew him who considers himself already at war with society. Instead of generating in him additional hatred, it forms rather a transition from a life of crime and vice to that of sobriety and honesty. In short, it is no *infliction* of punishment, but rather a *privation* of comforts.

5. It does not deaden the moral feeling of the convict still more, either by his finding himself in a degraded company, or by the infliction of corporal punishment, without which our system *can* do.

II. Labor is necessary, with regard to the convict, for three reasons :—

1. It calms the mind of a convict—it assuages. The wonderful effect of labor and activity, so great with all men, is not less so with a convict. The testimony of a French prison-keeper, given in my introduction, mentioned above, is very interesting and correct.

2. It makes solitary confinement physically and morally possible. Without it, solitude is cruelty, and would lead to *brooding* instead of *reflecting* ; would drive the convict to a bitter feeling of revenge, not to reconciliation with society.

3. It gives to the convict the means of living honestly after liberty has been restored to him, and prevents him in many cases from recommencing that life which is so injurious to society.

III. Without labor, it would be impossible for a convict to give any degree of steadiness to his thoughts ; imagination would invariably overpower reflection, and a wild state of the mind, whether consisting in actual insanity, medically so called, or not, must be the natural and unavoidable consequence, according to the organization of the human mind. Man was not made to be without labor, especially not in solitude. Vice and vicious desires are the necessary consequence of idleness, and particularly of *absolute* idleness with a *convict*. Even those who have no practical knowledge of criminals, can easily imagine to what state of mind, and how great a demoralization with most convicts, absolute solitude without labor must lead. What shall a

convict do? Read? He who has not been imprisoned, does not know how difficult it is, even for a cultivated mind, to read the whole day: how much more difficult, then, must it not be with convicts, who generally belong to the least educated classes? I repeat it, labor is, both in a moral and physical view, (not to speak of the economical,) as necessary as solitude; and the latter without the former, (except by way of additional punishment for trespasses *within* the prison walls,) would be both cruelty and the most injudicious plan, because it would return the convict upon society as an incensed felon, panting for revenge.

IV. A great excitement exists at present in various parts of our Union, against labor in the prisons. I do not consider this the place to investigate the matter thoroughly; I only will state that all arguments which have as yet been brought forward against it, seem to be futile, that more or less labor has always existed in prisons, and that a penitentiary system without labor is a contradiction in itself. I allow that care ought to be taken that the prisons, or in other words, the State does not sell the goods manufactured in the penitentiaries for less than a fair market price. In discussions of this kind the immense *expense* which a criminal causes to the community is hardly ever taken into consideration. Not only that the courts, police, &c., must be paid for him, but the actual loss of property caused by all crimes against property is incalculable; and we ought not to allow ourselves to be guided by minor interests, when the question is whether an individual shall return to society with the means of providing for an honest life, or as the old obnoxious *being of prey*. The consideration lately stated by a gentleman in very high authority, that, perhaps, it is wrong to make of the convicts mechanics, and thus to send them all on their leaving the penitentiary, to one class and thereby to endanger the morals of their class, seems to me unfounded. First, what class do the mechanics form? I do not know the mechanics as a separate class; they are citizens as the farmers are, and have morally no interest of their own. Is it desirable that a criminal should, if possible, change his life, or not? If not, then let us abandon all punishment; if however it is desirable that the convict should reform, then let us give the means of being honest to him, to whom they have been denied but too often, not by his own guilt. But wherever the released convict may turn, the same objection can be made; if we do not teach him a trade, he must become porter, day laborer, work on a farm, &c., should he, which is not probable, resolve to live honestly without having learned some trade. It is, therefore, in my opinion not wise when some writers have praised this excitement, as showing a lively moral sensibility in the mechanics, who do not wish to see their trade degraded, by the instruction of criminals in it. As if honesty itself were degraded, because the convicts are taught to be honest; or is the bible of the honest part of the community insulted, because the same bible is given into the hands of convicts? The convicts breathe, eat, sleep; are all these actions henceforth degraded?

V. Since solitude is so essential a feature in our penitentiary sys-

tem, it would be well perhaps to define more clearly what "solitary confinement at labor, in a cell or work-yard" is meant to be. Is a convict who works as baker alone at his oven, within the prison walls, in solitary confinement or not? As a general rule solitude within the cell and yard, ought certainly to be as little as possible interrupted. But economical considerations may sometimes be very powerful; and it might be permitted in such cases, to put one or two convicts to work out of their cells, yet they never ought to see each other, nor ought they to be placed together with other people, or where they can be seen by any one except the prison officers. I would always advise to keep solitude uninterrupted as much as possible.

VII. The whip is unknown in our penitentiary; it would little accord with our system which strives to avoid every degrading punishment, as well as every exciting one. How then is obedience to be exacted? for no penitentiary system can exist without the power of exacting obedience, as also the reform of a convict must begin with obedience to the laws. In the Auburn system, the whip is the final means of exacting instant obedience. Our system does not acknowledge it; what other adequate means have we? I know of none which is so just and humane as privation of food until the convict has complied with what is expected from him. He has it in his power instantly to remove the pain, and nothing but what the mildest laws command is expected from him. In these cases it ought be clearly understood that the removal of the pain cannot be effected by any other means but by compliance with the rules. "It is the first of all things," said an experienced superintendant of a penitentiary in the State of New York to me, "to impress the mind of the convict with the conviction that he must obey the rules." It cannot be objected that in cases of extreme obstinacy, when privation of food for a certain time had no effect, another means should be tried, because I speak of extreme cases only when no other means have effect.

VII. To give an instance. Labor is almost universally liked by the convicts in solitary confinement, so much so, that nothing is more common than their asking and begging for light, when the days begin to short and lamps are yet not given to the prisoners, in order to work by candle light. But sometimes it will happen that convicts refuse to labor, and cannot be brought to do it by protracted solitude without labor, that would prefer insolence, however long it might last. If in such a case a piece of work is given to the refractory convict, which it is known he possesses the ability to perform, and on conviction that no food can be given to him until the task is performed, I can see no objection against the measure. If other means equally effective and mild can be proposed, let them be examined, but let it distinctly be understood, that compliance with the laws will and must be exacted. I believe there is no danger that a convict would carry his obstinacy to an extent, which would become really dangerous to him.

VIII. There are others willing to work, but not as much as can be fairly expected from the from the most moderate ability, or as much as they have performed previously; short allowance seems in such



case as a judicious means ; all convicts like their meals, particularly those in solitary confinement.

That part of the act, which authorizes the inspectors "to make such rules for the internal government of said prison, &c." ought to be extended, and the inspectors ought to be enjoined to define the disciplinary means, by which the warden may punish infringements of the rules and regulations, such as disturbance of silence, insolence, improper language, &c.

IX. It sometimes happens that a convict will disturb the harmony of the prison, to use a phrase borrowed from sea language. Silence is necessary in any penitentiary system, and though the convicts cannot converse with each other from cell to cell, a violent noise would be heard. The refractory convict, therefore, ought to be removed to a dark and distant cell ; but as he would disturb the necessary silence of the penitentiary, and excite the curiosity of his fellow convicts, while being led along the corridors, it would perhaps be well to use a gag for the short time that he passes the cells of others ; this would not last longer than two or three minutes ; it ought always to be done so that the convict cannot see any thing while he is lead along, in the same way as when he is first led to his cell ; he may then be left to himself in the dark cell, until he becomes silent.

X. The appointment of the inspectors is an important subject ; the general principles to be followed with regard to it seems to me :

1. That their appointment be as far removed from political vacillations as possible, and proceed from as stable an authority as it can be conveniently done : a penitentiary has nothing whatever to do with parties ; whoever may be in or out, the laws according to which the criminal has been sentenced, and which stamps a crime as such, remain immutable, while on the other hand no possible good can be expected from a penitentiary system which is subject to continual changes ; for, though the system rests on general and firm principles, its being put into practice depends nevertheless considerably upon the individuality of the warden. The moral and religious effect, expected from the system, depends in a great degree upon a treatment of the prisoners which can be only gradually developed, and requires time ; moreover, there is not all the good, which our system can effect, to be expected, if the warden is not animated by that philanthropic zeal which prompts him to act and assist the prisoners beyond the prescribed duty ; which makes him consider the convicts as unfortunate men placed for a time under his charge. Whatever rules the Legislature may prescribe, that zeal cannot be reduced to rules nor be included under any prescribed responsibility of the warden. But what man, animated by such a noble and rare zeal would be willing to be appointed as warden, had he no expectation that he would be left in his place as long as he fulfils faithfully all his duties ? Rotation is practicable and may be beneficial in various branches ; it is against the nature of the subject itself, wherever a moral plan of education, training, &c., is to be pursued. If rotation of teachers in schools would inevitably bring their ruin, it would still more counteract all the beneficial results



expected from the penitentiary system. We ought never to forget that we necessarily defeat the end of any institution by subjecting it to influence entirely foreign to it. On the other hand, a politician would be a poor warden of a penitentiary ; more than even a minister he ought to consider himself a servant of mankind for whom no parties exist. I should therefore consider the appointment of inspectors by the Legislature as mandatory ; I think the Judges of the Supreme Court proper persons for this purpose.

2. That it is of the greatest importance that persons should be appointed as inspectors who are acquainted with prison discipline or for so long a time, that this knowledge may be obtained, and the fruits of it may yet be reaped during the term of the same inspectors. Prison discipline is not like a number of other subjects, easily understood by a clear minded individual and according to sound, general principles which guide us in other respects. Criminals form a community of men, in some respects much more like the honest portion of society, than most people suppose, in others much more different from any other community than is generally believed. A criminal is an inconsistent being, uniting the thoughtlessness of a child with the dissimulation of vice, folly and simplicity with cunning and experienced artfulness. The period for which an inspector is appointed, therefore, ought not to be too short.

3. That there be not too great a number of inspectors. The nature of a penitentiary requires that the board of inspectors must not become a *debating assembly*, but ought to be an *acting board*. Its energy must not be weakened. The present number of inspectors strikes me as sufficient.

X. Official visitors are necessary. Those whom the law appoints, (act of April 23, 1829, art. VII.) ought to be official visitors, but public opinion calls, perhaps, for official visitors of another kind ; so that the public have an assurance, that the system established by law is faithfully executed. To find out a way of appointing a body of men for this purpose, is more difficult than would appear at first glance ; for, send a man who does not know anything about a penitentiary system, into a penitentiary to inquire into its management, what will he do ? He goes to the convicts, and asks them how they are treated, whether they have to complain of anything, &c.—a mode of proceeding by which very little is gained. The convicts often will lie ; often, perhaps unwillingly, exaggerate ; make themselves the objects of pity : sometimes they will praise the keepers, in the hope of gaining something by it, &c.—In short, if the testimony of the criminal is worth any thing, that of the warden, a *virtuous* man, is worth at least as much. I do not mean to say the convicts ought never to be heard, but the law provides already most humanely for this point, and enjoins the inspectors to visit the cell without the warden, and to question the convicts.

On the other hand, it is very important that silence and solitude be disturbed as little as possible ; and weighing the demands of all

parties, I would propose, perhaps, that the grand jury elect from among themselves a body of three, to be a *grand jury* for the purpose of inquiring into the penitentiary affairs. A small number, moreover, would be much more able to examine with any kind of accuracy than a body of twelve or twenty men.

XI. The law (art. VII of the act of April 23, 1829) gives the sole right of appointing the under-keepers to the warden, and the power of discharging them, to the warden and the board of inspectors concurrently.

An establishment, the success of which depends so much upon the faithful and zealous performance of a number of duties which cannot be defined nor even demanded by law, and upon the unanimous co-operation of all the officers, as well as the ready assistance of the under-keepers, requires also, in my opinion, that the warden should be the sole person who should select his assistants, because, in a penitentiary, this choice *ought* to be made partially according to the individuality of the warden.

A & B may be two equally virtuous, intelligent, industrious and kind-hearted men, and yet, A may be unfit to be under-keeper under a certain warden, while B may be the very individual who ought to be selected. If you entrust to a warden several hundred beings, you may easily entrust him with the power of appointing his under-keepers: yet, it might be fair that he should exercise this power with the consent of the inspectors; but on no condition whatever, ought the inspectors to have the power of forcing an under-keeper upon him. The power of discharge ought, perhaps, to remain as now defined by law. The warden has to live with his overseers, as in a family, and it would be of little advantage, were he forced to retain an overseer though their individualities do not suit each other.

XII. The law ought not to demand duties which it is a bare impossibility to perform. Thus, the act of April 23, 1829, art. I, demands that the warden shall "see every prisoner under his care, at least once in every day," and the act of March 28, 1831, sect. 1, orders four hundred more cells to be built. The penitentiary will contain, then, about six hundred cells. Now suppose that two minutes is the average time of the warden's visits.—Sometimes more would not be requisite than looking into the cell and seeing that it is kept clean; but at others, the visits must extend to four, six, and ten minutes, if they shall be of any use. Six hundred visits of two minutes each, would require twelve hundred minutes, or twenty hours! or take the average time but *one* minute, which is certainly the shortest, it would require ten hours, alone for these visits.

XIII. It has always appeared to me, that the Pennsylvania penitentiary system, to be perfect, would require a *school master*, appointed to teach the convicts reading and give them moral lessons, under the direction of the warden and the superintendence of the inspectors.—He ought to be required by law, to keep a journal of what he has daily done, the progress of the convicts, and of any uncommon occurrence.

XIV. Books are indispensable for a penitentiary system on our plan : they are now collected by donations ; the law might do something for this important point.

All my experience has shewn me, that it is not advisable to give the whole Bible into the hands of convicts. The Bible contains a number of passages which the perverted mind of a convict turns to bad account ; he will often delight in examples held up in the Old Testament for correction, as being congenial to him. I speak here from facts which have come to my own knowledge. It would be highly desirable if there could be made for the prisoners :

1. Extracts of the Bible.

2. A catechism of civil duties, laws and government.

A history of the United States, drawn up for schools, would always form an excellent work for convicts, together with some popular works on natural history. The latter are much liked by the convicts, and they give wholesome food to the mind.

I cannot dismiss the subject, without drawing your attention to the pardoning power as now used, though the subject does not fall, perhaps, within the immediate circle of your inquiry. I have given my views on this alarming evil, in my introduction to the mentioned work, on page 29 and seque. Let me add—for it is important to me to bring high authority in support of my remarks—that one of the most experienced wardens of a large penitentiary, declared to me, that he had carefully read my observations on the pardoning power, and that he fully agreed with every word, both as to the effect of pardoning in general, and on the convict in the prison in particular. On February 6, 1818, an ordinance was issued in France, according to which, good behaviour entitles a convict to a pardon, by shortening the time of imprisonment. It was Mr. de la Ville de Mirmont, Inspector General of prisons, who induced the keeper of the seals to cause this law to be passed. In a work containing observations on the work of Messrs. de Beaumont and de Toqueville, (Paris, 1833.) Mr. de Mirmont, after having made a number of sound reflections on subjects of pardon, says :—"It was I who persuaded the minister to cause this ordinance of 1818, and often have I since regretted it." A strange kind of compassion shows itself often with those who judge of this matter by mere momentary impressions ; it leans all on one side—toward the criminal ; and compassion with the community, upon whom an unpunished and unreformed criminal is returned, is altogether forgotten. Yet it is but a poor compassion even with the convict. It is hardening him in vice and crime still more. I have no doubt whatever, that the frequent and irregular applications of pardoning, have essentially lessened the moral awe which was formerly, and always ought to be attached to the idea of crime, and are one of the causes of the deplorable frequency of crimes of an atrocious character in our country. Could nothing be done to regulate somewhat the pardoning power?



These are briefly my views on some important points belonging to penitentiary discipline and management, upon which we touched when I had the pleasure of seeing you.

I am with great respect,

Dear Sir,

Your obedient servant,

FRANCIS LIEBER.

To the Honorable CHARLES B. PENROSE,

Chairman of the committee of inquiry into  
the affairs of the Eastern Penitentiary.

PHILADELPHIA, January 29, 1835.

My dear Sir,—Permit me to send you a few additional remarks to what I had the pleasure of stating to you in my last.

I. I forgot to mention a fact, very important in regard to the *number* of inspectors. Formerly, there were five inspectors in the New York State prison, and it was found necessary to reduce even this number to *three*. You see then that our five inspectors are not too small a number.

II. I ought to have said, that a law might be passed that the grand jury of *Oyer and Terminer*, should elect a committee of three to visit the penitentiary. The law of 1829, permitted the grand juries of the courts of the city and county to visit the penitentiary. There are in one year, four Quarter Sessions, four Mayor's Courts, and one Oyer and Terminer held.

Each grand jury is composed of twenty-three individuals, so that the nine grand juries of one year are composed of two hundred and seven persons. The average term of imprisonment is three years; hence each prisoner was allowed to be visited by six hundred and twenty-one persons by way of grand jury visits, during his term!! You see how just it was to abolish a law which so directly counteracted a system, the basis of which is solitude.

III. If you read my translation of the work of Messrs. Beaumont and Toqueville, you will find the monstrous abuse of the pardoning power shown by statistical tables, how utterly every true effort of penal justice and legislation is defeated by *pardons*. You find these tables, calculations, &c. respecting pardon, on page 233 and sequel. By farther inquiry, I have found that those who possess this privilege of pardoning, would wish for nothing more than a limitation of it, could this be effected without a change of the constitution. It is a painful prerogative, which as long as it exists constitutionally, cannot be but misapplied in many cases. It is impossible that an individual so accessible to every citizen as a Governor of one of our states, can withstand the continued and pressing applications for pardons. The interest of the Governors therefore, as well as that of the community, calls for a regulation of this arbitrary, obnoxious and ruinous prerogative;



for if pardons continue to be so frequently and arbitrarily applied, if criminals continue to be restored to the level of honest citizens, by a mere arbitrary act, if in future convicts, who have *not* suffered the whole punishment which the law awards, shall have a great advantage over those convicts who *have* suffered the whole penalty, and be restored to their honor, which the latter are not, as is now the case, the moral sense of the community must severely suffer, because arbitrary measures take the place of those which the community ought to consider as the necessary and infallible consequence of crime. There is no doubt but that the general moral sense of a community must suffer, if a murderer is restored to all rights and privileges after a few years imprisonment, and if even his deed was not capable of arresting the arbitrary or casual deciding of the gravest question—whether a man shall continue to be imprisoned or not.

There is one way, it seems to me, which might be attended with great use, though, I willingly admit that it is by no means all I should like to see done. But it is perhaps that which for the present can be done. *Pass a law which obliges the Governor to advertise, in the county where a man has been convicted, that he intends to pardon such a person, six weeks before he can grant the pardon.* At present the law is extremely unjust. A man is convicted; the community has to pay for his trial, imprisonment, &c., and has suffered by his crimes. He is imprisoned. During his trial the community was represented, but as soon as he is imprisoned all is darkness; some person is bribed, he gets signatures for a petition for pardon—Often, very often given, merely to get rid of pestering applications; the signatures are carried to the Governor, and he again often grants the pardon to get rid of never ceasing applications, and the first thing the community—highly interested in the case—knows, is that a felon has been returned to them. Many criminals indeed, and particularly some of the worst ones would never be pardoned, were the Governor obliged to make known, in a suitable way, his intention of pardoning a person, six weeks before hand, and the poor and rich would stand much more on a par, while now the convict with respectable and wealthy relations stands a much greater chance, than the poor or homeless convict, and, generally speaking, the former deserves far less his pardon than the latter. The pardoning privilege as now used is one of the most unjust things in existence, from whatever side you may view it, and at the same time so entirely opposed to all our political and social principles, so heterogenous to our whole system, that it is surprizing how it can continue. You would deserve the warmest thanks of the community if you were to bring this matter before the legislature; a law as I have proposed would soon be imitated by other states, and a new period for penal justice would begin in our country. This law demands nothing than bare justice, and indeed, not even all that bare justice can demand.

Your obedient servant,

FRANCIS LIEBER.

To the Honorable CHARLES B. PENROSE,  
Of the Senate of Pennsylvania, Harrisburg.

# JOURNAL

OF THE JOINT COMMITTEE APPOINTED BY THE

Senate and House of Representatives,

TO ENQUIRE INTO THE ECONOMY AND MANAGEMENT OF THE

EASTERN PENITENTIARY,

IN THE COUNTY OF PHILADELPHIA.



## *Committee of the Senate.*

Mr. PENROSE of Cumberland ;	Mr. HOPKINS of Columbia ;
“ LEET of Washington ;	“ ROGERS of Bucks ;
“ PETRIKIN of Centre ;	

## *Committee of the House of Representatives.*

Mr. McELWEE of Bedford ;	Mr. STEVENS of Adams ;
“ ANDERSON of Delaware ;	“ IRVIN of Clearfield ;
“ KERR of Butler ;	



BY WM. T. ROGERS,

A MEMBER OF THE SENATE COMMITTEE.



# JOURNAL.



*In the Senate—Dec. 4, 1834.*

Ordered, That so much of the Governor's message as relates to abuses in the economy and management of the Eastern Penitentiary, be referred to Messrs. Penrose, Leet, Petrikin and Rogers. a committee to act in conjunction with a similar committee from the House of Representatives, if the house should appoint such committee, with power to send for persons and papers.—Extract from the Journal.

HENRY BUEHLER—Clerk.

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*North-west Committee room, Senate, Dec. 8, 1834.*

In pursuance of the above resolution, and a similar one on the part of the House of Representatives, the committees convened. Present Messrs. Penrose, Leet, Hopkins and Rogers.

On motion of Mr. Leet and Mr. Hopkins.

Resolved, That Mr. Rogers be appointed Secretary to the committee of the Senate,

The resolution was agreed to.

The committee on the part of the House of Representatives consisting of Messrs. M'Elwee, Anderson, Kerr of Butler, Stevens and Irvin, attended and the following proceedings took place in joint meeting.

Mr. M'Elwee presented a document signed by George M. Dallas, Esq. Attorney General of the Commonwealth of Pennsylvania, which was read.

On motion of Mr. Stevens and Mr. Hopkins,

Resolved, That the document from the Attorney General just read, be not entered on the journal.

The resolution was agreed to.

On motion of Mr. Stevens and Mr. Leet,

Resolved, That the Attorney General be informed, that the committee is organized, and ready to proceed to business; and that previous to entering on the investigation, he will himself, or name a prosecutor to prefer the charges against the inspectors, warden and others of the Eastern Penitentiary; but that the charges be specifically drawn up and preferred, copies whereof shall be furnished to the accused, and the enquiry be confined to such charges.

The resolution was agreed to.

On motion of Mr. Stevens and Mr. Hopkins,

Resolved, That a copy of the foregoing resolution, be signed by the Chairman and Secretary, of the committee on the part of the Senate and House of Representatives, and forwarded to the Attorney General.

The resolution was adopted.

On motion of Mr. Stevens and Mr. Leet,

Resolved, That application be made to the Senate to confer on the committee of the Senate, the power to visit the Eastern Penitentiary, in case the joint committee should deem it expedient.

The resolution was agreed to.

On motion of Mr. M'Elwee and Mr. Anderson,

Resolved, That when the committee of the Senate and the committee of the House of Representatives, act in joint meeting, the chairman of the Senate committee act as chairman.

The resolution was agreed to.

*North-west Committee room, Senate, Dec. 9, 1834.*

Mr. Penrose on the part of the Senate committee, reported that a resolution had been offered to the Senate and adopted, authorizing the committee on the part of the Senate to visit the Eastern Penitentiary, if the committee should deem it expedient.

*North West Committee Room, Senate, December 12, 1834.*

The joint committee met: a quorum of members present, including Mr. Petrikin.

A letter from the Attorney General was read and laid on the table.

On motion of Mr. Leet, and Mr. Kerr,

Resolved, That the Governor be requested to furnish the committee with any written charges against the inspectors, warden and others in relation to the management of the Eastern Penitentiary, which he may have in his possession.

The resolution was agreed to.



Mr. Penrose, and Mr. McElwee, were appointed a committee to wait on the Governor, who reported that they had performed that duty, and received from him the following documents :

The documents were ordered to lie on the table.

On motion of Mr. Leet and Mr. Anderson,

Resolved, That the chairman of the joint committee, notify the Attorney General, Inspectors, and Warden of the Eastern Penitentiary, that the joint committee, will meet in Philadelphia, on the 16th inst. to enter upon the duties of their appointment.

The resolution was agreed to.

On motion of Mr. Leet, and Mr. Irvin,

Resolved, That Messrs. Leet, Rogers, and Petrikin, be a committee to take down the testimony assisted by Mr. Anderson.

The resolution was agreed to.

On motion of Mr. McElwee, and Mr. Hopkins,

Resolved, That Messrs. McElwee, Rogers, and Anderson be a committee of accounts.

The resolution was agreed to.

On motion of Mr. Leet, and Mr. Anderson,

Resolved, That the joint committee meet at Mrs. Yohe's North American Hotel, in Philadelphia, on Tuesday the 16th of December at 10 o'clock, A. M.

The resolution was agreed to.

The committee adjourned.

## PHILADELPHIA,

*TUESDAY, December 16, 1834.*

The joint committee met : a quorum of members present.

The chairman laid before the committee a letter signed by the president of the board of inspectors, offering the committee the use of a room in the Eastern Penitentiary, during their examination.

On motion of Mr. Rogers and Mr. Petrikin,

Resolved, That the joint committee respectfully decline the offer on the part of the board of inspectors of the Eastern Penitentiary to occupy a room in said building ; and that the committee occupy a room in the State House, to meet this afternoon at three o'clock P. M., and notice thereof be given to the Attorney General, and the inspectors and warden of the Eastern Penitentiary.

The resolution was agreed to.

*Same Day—Afternoon.*

The committee met at three o'clock P. M., a quorum of members present.

The Attorney General presented the following charges against the warden and others of the Eastern Penitentiary, accompanied with a list of witnesses. Copies whereof were furnished to the inspectors and warden of the Eastern Penitentiary.

Charges against the Warden, Officers and Agents of the Eastern Penitentiary, for investigation by the joint committee of the Senate and House of Representatives of the Commonwealth of Pennsylvania, on so much of the Governors' message as relates to abuses in the economy and management of that institution: drawn up and preferred by the Attorney General, conformably to the resolution of the committee, dated the 8th of December, 1834.

FIRST. Practices and manners among the officers, agents and females, licentious and immoral; attested by indecent conversations, gross personal familiarities, sexual intercourse, and the existence of a filthy disease; generally known to and participated in by the warden, one John Holloway, one Richard Blundin and his wife, and others unknown.

SECOND. Embezzlement and misapplication of the public provisions and public property, and of the public labor, to the private and unauthorized use and advantage of various persons connected with the institution, and of others unconnected with it; on the part particularly of the said wife of Richard Blundin, and to the knowledge and with the connivance of the warden; as also to the use and advantage of the warden, for the improving and working of a farm and factory belonging in whole or in part to the said warden.

THIRD. Cruel and unusual punishments inflicted by order of the warden upon refractory convicts; exemplified in the two following cases: the case of one Seneca Plumly, who, in the depth of winter, was tied up against the wall attached to his cell, by the wrists, while buckets of extremely cold water were thrown upon him from a height, which partly froze on his head and person, and he was shortly after discharged as incurably insane; and the case of Mathias Maccumsey, in whose mouth an iron bar or gag was forcibly fastened, that his blood collected and suffused upon his brain, and he suddenly died under the treatment.

FOURTH. Known practices and habits inconsistent with the object and principles of a penitentiary and its system, subversive of its order, regularity and security; such as the giving of large entertainments within the prison, by the warden, carousing and dancing late at night at the apartments of the said wife of Richard Blundin, within the walls, frequent intoxication, habitual intercourse with lewd and depraved persons, and irregular hours also on the part of the said wife of Richard Blundin, and with the knowledge and connivance of the warden.

G. M. DALLAS, Attorney General.

December 16, 1834.

On motion of Mr. Petrikin, and Mr. Hopkins,

Resolved, That the warden and other officers of the Eastern Penitentiary, charged with improper conduct, in the general management of said institution be heard by himself or counsel.

The resolution was agreed to.

On motion of Mr. Leet and Mr. Kerr,

Resolved, That when the committee adjourns, they adjourn to meet from day to day, at 10 o'clock A. M. of each day, until the investigation be completed.

Laid on the table.

On motion of Mr. Rogers, and Mr. Kerr,

Resolved, That when the committee adjourns, they adjourn to meet in the grand jury room of the Circuit Court at 10 o'clock A. M. tomorrow morning.

The resolution was agreed to.

On motion of Mr. Petrikin, and Mr. McElwee,

Resolved, That the charges against Samuel R. Wood, as warden of the Eastern Penitentiary, as preferred by the Attorney General, be examined independently of any allegations and charges against other officers of the institution.

Laid on the table.

The committee adjourned.

#### SPECIAL MEETING.

*WEDNESDAY, December 17, 1834.*

The committee met in their chamber at the North American Hotel: a quorum of members present,

On motion of Mr. Petrikin and Mr. Irvin,

Resolved, That the committee have no authority vested in them to employ counsel, in behalf of the Commonwealth, in the case of the investigation now in progress before the committee relative to the management &c. of the Eastern Penitentiary.

On the question,

Shall this resolution pass?

The yeas and nays were called by Mr. Petrikin and Mr. Irvin, and are as follows:

Yeas.—Messrs. Leet, Hopkins, Penrose, Petrikin, Rogers, Kerr, Irvin and Stevens—7.

Nays.—Mr. McElwee—1.

So it was decided in the affirmative.

On motion of Mr. Stevens and Mr. Petrikin,  
Resolved, That the complainants be permitted to appear by counsel, before the committee, and that the remuneration of said counsel, be a question for the Legislature to determine.

On the question,

Shall the resolution pass?

The yeas and nays were required by Mr. Petrikin and Mr. Kerr, and were as follows:

Yeas—Messrs. Leet, Hopkins, Penrose, Petrikin, Rogers, Kerr, Irvin and Stevens—8.

Nays—Mr. M'Elwee—1.

So it was decided in the affirmative.

On motion of Mr. Petrikin and Mr. Stevens,

Resolved, That Mr. Rogers pay all witnesses who attend in pursuance of the requisition of the chairman of the joint committee.

The resolution was agreed to.

The special meeting adjourned.

*WEDNESDAY December 17, 1834.*

The Attorney General presented the following additional charge.

FIFTH CHARGE. A frequent and illegal practice, in the treatment of convicts by the warden, of departing from and, in effect, disregarding the sentences of the courts of justice—relaxing their severity, commuting their inflictions, or evading their real meaning; that substituting his individual caprice or discretion for the decisions of the law, and defeating the regularity and precision which ought to characterize the penitentiary system.

G. M. DALLAS,  
Attorney General.

The resolution offered yesterday by Mr. M'Elwee and Mr. Petrikin relative to Samuel R. Wood, was called up for consideration and not agreed to.

On motion of Mr. Petrikin and Mr. Leet,

Resolved, That the warden or other proper officer of the penitentiary, produce the book of account—the book in which the sentences of the court are recorded—and copies of the annual report heretofore made to the Executive.

The resolution was agreed to, with the following amendments.

“That the committee now proceed to hear the charges against Samuel R. Wood;” “and the others person implicated.”

On motion of Mr. Petrikin and Mr. Leet,

Resolved, That the board of inspectors, through their president, be



allowed to ask the several witnesses who may be examined, such questions as they wish, after the cross examination shall have been closed.

The resolution was agreed to.

James Torrey, a witness, called, sworn, closed his testimony, signed it, and was discharged.

The committee adjourned.

*THURSDAY, December 18, 1834.*

The committee met. A quorum of members present.

Silas S. Steel, a witness, being called, says, that he believes in one God. I believe in the New Testament. I believe in retribution in this world by conscience. I believe in retribution from the Deity, either in this world or in the world to come. I am fully aware of the legal consequences of perjury. I am not confirmed in the belief that the sins and crimes of this world will be punished in the next, but am inclined to think so. I do not believe in the Old Testament. I mean by retribution, that I shall be justly punished for my offences—all offences, great and small. I believe that I shall be punished by the Deity, by his supernatural power. I believe that Deity punishes in this world. I do not believe the Old Testament to be of divine revelation.

On motion of Mr. Leet and Mr. Irvin,

Resolved, That in the opinion of this committee, the witness, Silas S. Steel, is a competent witness.

On the question of the passage of the resolution,

The yeas and nays were called by Mr. Petriken and Mr. Hopkins, and are as follows:

Yeas—Messrs. Leet, Penrose, Rogers, Irvin and M'Elwee, 5.

Nays—Messrs. Hopkins, Petrikin, Anderson, Kerr and Stevens, 5.

So the resolution was not agreed to.

On motion of Mr. M'Elwee and Mr. Irvin,

Resolved, That Silas S. Steel shall be rejected as a witness.

On motion of Mr. Anderson and Mr. Leet,

Resolved, That the further consideration of the resolution and question be postponed for the present, and that the committee proceed to the examination of another witness.

Which was agreed to.

On motion of Mr. Petrikin and Mr. Leet,

Resolved, That in the admission of testimony, the committee will be governed by the rules of courts, known and practised, waiving the parliamentary rules which usually govern legislative proceedings.

Laid on the table.

On motion of Mr. Stevens and Mr. Petrikin,

Resolved, That the resolution relative to the presence of witnesses, applies only to witnesses on the same side, then under examination.

The resolution was agreed to.

Leonard Pflieger was called as a witness, sworn, and proceeded with his statement.

On motion of Mr. Stevens and Mr. Irvin,

Resolved, That the private conduct and morals of persons connected with the Eastern Penitentiary, shall not be inquired into, unless such conduct be brought to affect their official acts, and their conduct within the said penitentiary.

The resolution was agreed to.

On motion of Mr. M'Elwee and Mr. Petrikin,

Resolved, That the warden be and he is hereby required to produce to the committee the instrument called a gag, with which Maccumsey was gagged, and the straight jacket of No. 61, and any and every other instrument of punishment, if any, that may be made use of in the prison, under the charge of the said warden.

Laid on the table.

The committee adjourned till 10 o'clock to-morrow morning.

*FRIDAY, December 19, 1834.*

The committee met. A quorum of members present.

The examination of Leonard Pflieger closed and signed.

On motion of Mr. Leet and Mr. M'Elwee,

The resolution offered yesterday, in relation to a gag and straight jacket, was called up and agreed to.

Silas S. Steel being called, says: I believe in the immortality of the soul; I believe in the accountability of the soul for the crimes and sins of this life that the soul is accountable to the Deity. If the crimes of the soul are not punished in this life, I think, they must inevitably be punished in the world to come.

The following resolution offered yesterday was called up for consideration:

Resolved, That Silas S. Steel shall be rejected as a witness.

The resolution was not agreed to.

On motion of Mr. Petrikin and Mr. Irvin,

Resolved, That in consequence of the explanation given by Silas S. Steel, of his belief in the immortality and future accountability of the soul, he be admitted to testify as a witness.

The resolution was agreed to.

Silas S. Steel was then sworn and proceeded with his testimony.

On motion of Mr. Petrikin and Mr. Irvin,

Resolved, That it will promote the convenience of the committee, and the ends of public justice, to confine the enquiries to parts connected with some of the officers of the institution or coming under their cognizance; and that for this purpose, it is absolutely necessary that the first enquiry should be into the names and respective situations of the officers of the Eastern Penitentiary, and by whose authority, and under whose control, in regard to their domestic habits and arrangements any persons or families, not officers of the institution, reside within the walls of the penitentiary.

On motion of Mr. Petrikin and Mr. Irvin,

The resolution was postponed, and the following resolution offered as a substitute:

Resolved, That the inspectors of the Eastern Penitentiary, furnish the committee with a list of the officers of said institution, principal as well as subordinate, detailing their particular duties; and further, whether a matron has been at any time heretofore, or is now employed in said institution, giving her name, and generally, the names, occupations and callings of all other persons within the institution. (not convicts.)

The following amendments were offered:

"and also, whether any, and what persons and families, not officers of the institution, at any time resided within the walls of the penitentiary, under the authority of the board of inspectors."

"and that the warden be also requested to produce the journal kept by him, agreeably to the second articles of the act of the 25d April, 1829."

The resolution so amended, was agreed to.

Question by Attorney General to Silas S. Steel.

"Did you while at the Eastern Penitentiary, know of any circumstances or appearances, which induced you to believe that a filthy disease, (such as the venereal,) existed among those who lived within the walls? If you did, state the same."

This question was objected to by the counsel for the respondents, as not being a proper one in the present enquiry.

On motion of Mr. Petrikin and Mr. Anderson,

Resolved, That the objection made by the counsel for the respondents, to the question proposed by the Attorney General, shall be sustained.

The yeas and nays were called by Mr. Petrikin and Mr. Stevens, and were as follows:

Yeas—Messrs. Hopkins, Petrikin, Anderson and Stevens.—4.

Nays—Messrs. Lect, Penrose, Rogers, Kerr, Irvin & M'Elwee.—6.

So the objection was not sustained.

On motion of Mr. Stevens and Mr. Petrikin,

The following protest was presented and ordered to be entered on the Journal of the committee.

The undersigned having voted for excluding the evidence on the question, "whether witness had any knowledge of the existence of a filthy disease within the walls of the Penitentiary?" have reduced their reasons for said vote to writing, and ask that the same may be filed among the records of the committee.

1. We believe that the committee have no right, and that it will be highly improper and indelicate to inquire into the private conduct and morals of individuals employed about the penitentiary, any further than as such conduct and morals are connected with and have an effect upon the official conduct and example of the officers of said institution.

2. The question and testimony offered, is a scrutiny into the *private* conduct of persons not named and not known to the officers of the penitentiary, and over whose *private* morals the inspectors and warden of the penitentiary had no jurisdiction, and to whom it is not alleged to have been known.

3. That the inquiry proposed is inquisitive; a wanton investigation into the *private* conduct and *private* morals of those whose private acts can no way affect the good or bad management of the penitentiary, or its good or bad effects upon convicts.

4. That the inquiry is degrading to the committee, and to the Legislature, whose delegated agents the committee are.

We therefore enter our solemn protest against a course of proceedings which we deem improper and inquisitorial, and pray that this protest be entered on the Journal of the committee.

THADDEUS STEVENS,  
UZAL HOPKINS,  
S. ANDERSON,  
H. PETRIKIN.

The committee adjourned until 10 o'clock to-morrow morning.

*SATURDAY December 20, 1834.*

The committee met: A quorum of members present.

On motion of Mr. Leet and Mr. Kerr, the following resolution was called up:

Resolved, That when the committee adjourn, they adjourn to meet from day to day, and that they meet at ten o'clock, A. M. of each day, until the investigation of the business before them be completed.

The resolution was agreed to.



On motion of Mr. Petrikin and Mr. M'Elwee,

Resolved, That the counsel for the respondents, and the Attorney General, have a right to reply to observations of members of this committee.

Laid on the table.

The examination of Silas S. Steel, continued.

On motion of Mr. Leet and Mr. Anderson,

Resolved, That when the committee adjourns, they adjourn to meet on Monday afternoon at three o'clock, with a view to enable the committee to accept the invitation of the trustees of the University of Pennsylvania, to attend the inauguration of the Rev. Dr. Ludlow, which takes place on Monday morning next,

The resolution was agreed to.

The committee adjourned.

### *MONDAY, December 22, 1834.*

The committee met. A quorum of members present.

The examination of Silas S. Steel, was continued, closed and signed by him.

The Attorney General made numerous references, to the minute book of the board of inspectors, and the convict book.

On motion of Mr. Petrikin and Mr. Irvin,

Resolved, That the board of inspectors be required to furnish the committee with a copy of the minutes and papers referred to and read by the Attorney General.

The resolution was agreed to.

The warden being called upon to produce the gag that was put on Maccumsey states, that he has made diligent search for it, but that the same cannot now be found: He has therefore caused to be made a similar instrument, and now produces the same.

Silas S. Steel again called—when the gag said by the Attorney General to be used on Maccumsey, was produced by the Attorney General.

The two gags were ordered to be placed in the possession of the committee.

The journal of the warden was produced in loose sheets.

On motion of Mr. Petrikin and Mr. Kerr,

Resolved, That the journal of the warden, directed to be kept by act of Assembly, produced by the warden to the committee, in loose sheets of paper, is hereby directed to be bound in a temporary form, for the sake of convenience to the committee.

The resolution was agreed to.

On motion of Mr. Leet and Mr. Anderson,

Resolved, That the board of inspectors or warden be required to produce before the committee, the books to be kept by the clerk, according to the 8th article under section 8, respecting the history, instructions, temptations, associations, general habits, predominant passions, and prevailing vices—as also the intended residences of departing convicts—the ledger of the board—copies of the rules and regulations, if any, prescribed by the board for the government of the prison—a statement showing the sums paid for the services of Mrs. Blunden—the dates of those payments—the mode of payment—and the fund out of which the payments were made—a statement showing the amounts in which the respective counties of the State became indebted to the penitentiary on account of their convicts—the sum actually paid by each, and the expense incurred, if any, by their collection, and to whom these expenses was paid—a statement showing the amount to discharged convicts, and their names under the last clause of article 8 in section 8, of the act of 3d April, 1829, and the calenders of the respective blocks and cells, shewing the names and number of the convicts.

The resolution was agreed to.

Philip Hahn, jr. was called as a witness, sworn and proceeded with his testimony.

The committee adjourned.

#### *TUESDAY, December 23, 1834.*

The committee met. A quorum of members present.

Philip Hahn, jr. proceeded with his testimony, closed and signed his statement.

William Griffith, a witness, was called as a witness, sworn and proceeded with his testimony.

On motion of Mr. Petrikin, Mr. Stevens obtained leave of absence for a few days from to-morrow.

The committee adjourned.

#### *WEDNESDAY, December 24, 1834.*

The committee met: a quorum being present, William Griffith proceeded with his testimony.

On motion of Mr. Rogers, and Mr. Kerr,

Resolved, That the inspectors of the Eastern Penitentiary be requested to produce before the committee the following books and papers:

1st. The journal of the physician to be kept according to the fourth article of the eighth section of the act of assembly.

2. The bonds given by the treasurer for the faithful discharge of his duties.

3rd. A statement by the treasurer, showing the appropriations heretofore made by the commonwealth for the enlargement of the penitentiary; the names and times of the treasurer's receipt, and modes of separate charge and disbursement of these appropriations: together with a detailed statement of the payments under their respective heads and to what persons.

4th. An analytical statement of the general item of accounts, styled "men's wages" setting forth the names of the persons to whom payments were made, and the nature of the services they rendered, accompanied by the original receipts given by those to whom the payments were made.

The resolution was agreed to.

On motion of Mr. Petrikin and Mr. Kerr,

Resolved, That the board of inspectors be required to produce the original letter from William Griffith one of the under keepers of the Eastern Penitentiary to the said board of inspectors, having direct relation to the embezzlement of public property by Richard Blunden, and his wife.

The resolution was agreed to.

William Griffith closed his testimony and it was read over and subscribed by him.

The committee then adjourned to meet on Friday morning, at ten o'clock, A. M.

[Thursday, Dec. 25, 1834.]

*FRIDAY, December 26, 1834.*

The committee met. A quorum present.

Judge Coxe, a witness, was called, sworn, and proceeded with his testimony.

The Attorney General proposes to ask what abuse of the convict, the washerwoman complained of, and whether it was made the ground of official inquiry by him, and in what manner and to what effect?

The chairman of the committee objected to the question;

And on the question,

Shall this objection be sustained by the committee?

The yeas and nays were ordered by Mr. Hopkins and Mr. Irvin, and are as follows:

Yeas.—Messrs. Hopkins, Penrose and Anderson—3.

Nays.—Messrs. Leet, Petrikin, Rogers, Irvin and Kerr—5.

So it was decided in the negative.

The committee adjourned.

*SATURDAY, December 27, 1834.*

The committee met. A quorum of members present.

On motion of Mr. Petrikin,

Mr. Anderson obtained leave of absence for a few days from to-day.

Judge Coxe proceeded with his testimony, closed, and signed it.

On motion of Mr. Rogers and Mr. Irvin,

Resolved, That when the committee adjourn, they adjourn to meet on Monday morning at 10 o'clock.

The resolution was agreed to.

The committee adjourned.

*MONDAY, December 29, 1834.*

The committee met. A quorum of members present.

The Attorney General made numerous references to the Warden's Journal, the Medical Journal, and Convict's Book; and

On motion of Mr. Petrikin and Mr. Irvin,

Resolved, That the board of inspectors be required to furnish the committee with a list of the number of prisoners confined each year in the Eastern Penitentiary, since its organization; and what number were punished in each year for offences within the institution; the nature of their offences, and how punished.

The resolution was agreed to.

On motion of Mr. Leet and Mr. Kerr,

Resolved, That the board of inspectors are hereby requested to furnish the committee with a statement of the number of bonds heretofore given by the treasurers respectively, their dates and amounts, together with information as to the person in whose custody said bonds have been confined, and why the board has now in its possession but one of said bonds, and that dated more than a year ago.

The resolution was agreed to.

William Mayall, a witness called, but not present.

Israel G. Averell, called, but dismissed until Friday next.

William Parker, a witness, called, sworn and proceeded with his testimony.

The committee adjourned.

*TUESDAY, December 30, 1834.*

The committee met: a quorum of members present.

William Parker, a witness, proceeded with his examination.



On motion of Mr. Leet and Mr. Kerr,

Resolved, That Samuel R. Wood, warden of the Eastern Penitentiary, be required to produce a letter addressed to him by William Parker, referred to by Parker in his testimony, as being the subject of conversation between Mr. Wood and himself.

The resolution was agreed to.

The committee adjourned.

*WEDNESDAY, December 31, 1834.*

The committee met: a quorum of members present.

William Parker a witness, proceeded with his examination, closed his testimony and signed it.

William Mayall, a witness called, sworn and proceeded with his testimony.

The counsel for the respondents object to the evidence given by William Mayall, of his understanding from the officers of that institution generally, that Mrs. Blundin was employed as matron, and so acted.

On the question of sustaining the objection,

The yeas and nays were called by Mr. Petrikin and Mr. Irvin, and were as follows:

Yeas.—Messrs. Hopkins, Petrikin and Anderson—3.

Nays.—Messrs. Leet, Penrose, Rogers, Irvin, Kerr and M'Elwee—6.  
So the objection was not sustained.

On motion of Mr. Rogers and Mr. Kerr,

Resolved, That when this committee adjourns, it will adjourn to meet on Friday morning at 10 o'clock.

The resolution was agreed to.

The committee adjourned.

*FRIDAY, January, 2, 1835.*

The committee met: a quorum of members present.

William Mayall, proceeded with his testimony, closed and signed it.

George Handy, a witness, called by the respondents, sworn, gave his testimony and signed it.

Joseph T. Mather, a witness called by the respondents, affirmed, and signed his statement.

Judge Coxe, re-called by the Attorney General, as a witness, and proceeded with his statement.

The committee adjourned.

*SATURDAY, January 3, 1835.*

The committee met—A quorum of members present.

Judge Coxe proceeded with his examination, closed and signed the second edition.

The committee adjourned to meet on Monday morning at 10 o'clock A. M.

*MONDAY, January 5, 1835.*

The committee met—A quorum of members present.

On motion of Mr. Rogers and Mr. Kerr,

Resolved, That the board of inspectors be required to produce the following papers :

I. The private set of minutes retained by the clerk of the board, and from which the public minutes were arranged and copied by the clerk of the prison, from November 12, 1833, to August 1834.

II. Copies of the two accounts of the disbursements in constructing the new cells furnished to the Auditor General in the fall or winter of 1833, by the board of inspectors.

III. The letter addressed by Alfred Merrick to the visiting inspectors. Judge Coxe and B. W. Richards, dated the 6th November, 1833.

IV. The letter addressed by the physician of the penitentiary, Dr. Bache, to Judge Coxe, in answer to a note respecting his not visiting all the prisoners,—as well those in health as the sick.

Resolved, That the inspectors be required to state in writing to the committee, whether in conformity with the act of Assembly, they ever gave directions, and in what manner the rations for the subsistence of the prisoners should be composed, and if they did, how and when, and to whom those directions were given ?

Resolved, That the warden, if he have them, produce the written permissions by two inspectors, required by the act of Assembly to justify his absenting himself any night from the Penitentiary.

The resolutions were agreed to.

The assignment of Samuel R. Wood was produced by the Attorney-General, together with his application for the benefit of the insolvent laws.

[Extracts read from the assignment and petition.]

Franklin Bache, M. D. was called as a witness by the Attorney General, sworn, and proceeded with his examination.

The committee adjourned.

*TUESDAY, January 6, 1835.*

The committee met. A quorum of members present.

Owing to the indisposition of Dr. Bache, the continuation of his examination was postponed.

Isaac Cox, a witness, called by the Attorney General, sworn, proceeded with his examination, closed, and signed his testimony.

On motion of Mr. Leet and Mr. Irvin,

Resolved, That the treasurer of the Eastern Penitentiary is hereby required to produce before this committee, the bank books kept by him with the respective banks with which the officers of the institution transacted their business.

The resolution was agreed to.

Israel G. Averell, a witness, called by the Attorney General and sworn.

The Attorney General produced a pardon signed by the Governor, dated Harrisburg, Dec. 31, 1834, from which it appeared that Josiah Averall, otherwise called Israel G. Averell, had been convicted of larceny, sentenced to four years imprisonment in the House of Refuge, commencing from the 15th April, 1830, and the pardon issued at the request of the Attorney General after the expiration of his sentence, "in order to restore him to his competency as a witness."

Israel G. Averell proceeded with his examination.

The counsel for Mrs. Blunden, objects to any evidence of Mrs. Blunden's visiting houses of ill fame out of the walls of the penitentiary, the fact not being known to the warden.

The objection was sustained by the committee.

The counsel for Mrs. Blunden moved to strike out so much of the witness's statement as includes Mrs. Blunden's having visited a house in Crabb street, the character of which the witness did not know of his own knowledge, the fact of such visit not being known to the warden.

The motion to strike out was not agreed to

The committee adjourned.

*WEDNESDAY, January 7, 1835.*

The committee met. A quorum of members present.

Israel G. Averel continued his examination, closed and signed his testimony.

John Harvey, a witness, called by the Attorney General, sworn, proceeded with his examination, closed, and signed his testimony.

The committee adjourned.

## SPECIAL MEETING.

*North American Hotel, Thursday, January 8, 1835.*

The committee met. A quorum of members present.

On motion of Mr. Rogers and Mr. Stevens,

Resolved, That a committee be appointed to inquire of the Attorney General, and the counsel for the respondents, the number of witnesses which yet remain to be examined, and the probable time which their examination will require.

The resolution was agreed to, and Mr. Rogers and Mr. Stevens appointed the committee.

On motion of Mr. Rogers and Mr. Kerr,

Resolved, That the committee hold evening sessions on Monday, Wednesday and Friday evenings, to meet at seven o'clock, P. M.

The resolution was agreed to.

The committee adjourned.

*THURSDAY, January 8, 1835.*

The committee met. A quorum of members present.

Thomas Mervine, a witness, called by the Attorney General, sworn and proceeded with his examination.

Question by respondent's counsel to witness :

Have you ever denied the fact that you were in partnership with Mr. Wood, and when ?

The witness declined answering the question, and was excused.

Question by respondent's counsel to witness :

Where are the books of the partnership between Mr. Wood and yourself ?

The witness declined answering this question.

On the question,

Shall Thomas Mervine be excused from answering the question ?

It was decided that he should not be excused ; and he was ordered to answer the question, which he refused to do, and presented the following statement, giving his reasons for so doing :

"I respectfully say to the committee, that if they want my books in reference to the partnership between myself and Mr. Wood, they are in my power, and the committee shall have them ; but if the books themselves are not wanted, and I am called upon to answer a question put by the counsel of Mr. Samuel R. Wood, my former partner, as to where those books are, I decline giving any answer, not intending any contempt of the authority of this committee, but merely because my private personal interest is involved in the question."

(Signed,) THOS. MERVINE.



On motion of Mr. Stevens and Mr. Leet,

Resolved, That the committee report the case of Thomas Mervine to the Legislature, and offer a motion for the consideration of the Legislature, that the Sergeant-at-Arms be directed to take the said Mervine into custody, and bring him before the Legislature, to answer for a contempt offered to the Legislature of the Commonwealth of Pennsylvania.

On the question,

Shall the resolution pass?

The yeas and nays were ordered by Mr. Petrikin, and were as follows:

Yeas.—Messrs. Leet, Penrose, Anderson, Kerr and Stevens—5.

Nays.—Messrs. Petrikin and Rogers—2.

So the resolution was agreed to.

On motion of Mr. Petrikin and Mr. Rogers,

Resolved, That Thomas Mervine be required to produce before the committee, the partnership books between himself and Mr. Wood, inasmuch as he states that the said books are in his power, and shall be produced if required.

On the question,

Shall the resolution pass?

The yeas and nays were required by Mr. Petrikin and Mr. Rogers, and were as follows:

Yeas.—Messrs. Petrikin and Rogers—2.

Nays.—Messrs. Leet, Penrose, Anderson, Kerr and Stevens—5.

So the resolution was not agreed to.

The committee then adjourned to meet on Friday morning at ten o'clock.

### *FRIDAY, January 9, 1835.*

The committee met. A quorum of members present.

Peter A. Browne, Esq. appeared as counsel on behalf of Thomas Mervine, a witness.

On motion of Mr. Stevens and Mr. Petrikin,

Resolved, That Thomas Mervine be brought before the committee, and the same question which he refused to answer yesterday, be again propounded to him by the chairman of said committee.

The resolution was agreed to.

Thomas Mervine, the witness, appeared, and the following question was propounded to him by the chairman:

Where are the books of the partnership between Mr. Wood and yourself?

The witness answered the question, and the following preamble and resolution were offered by Mr. Stevens and Mr. Leet :

Whereas Thomas Mervine has now answered the question propounded to him by the committee, and disclaims all intentional contempt of the Legislature; therefore,

Resolved, That no further proceedings be had on the resolution adopted yesterday relating to said contempt.

The resolution was agreed to.

On motion of Mr. Stevens and Mr. Petrikin,

Resolved, That the inspectors produce all the letters in their possession from Alfred Merrick to said inspectors, dated and by them received before the first Monday of December, 1834.

The resolution was agreed to.

Thomas Mervine continued his examination, closed his testimony and signed it.

John Daley, a witness, called by the Attorney General, sworn and proceeded with his examination.

### *SATURDAY, January 10, 1835.*

The committee met. A quorum of members present.

On motion of Mr. Stevens and Mr. Kerr,

Resolved, That the inspectors produce the original records and documents from which, it is alleged, the statements handed in yesterday, as to the number of prisoners and the punishments inflicted, have been prepared.

The resolution was agreed to.

Mr. Dallas, Attorney General, called the attention of the committee to private minutes of June 7th, 1834. The public minutes of that date close with the resolution acquitting Mr. Wood, &c. Resolution copied with inaccuracy.

In the original resolution of the private minutes, the words "now deemed to be closed" seem to be stricken out. The public minutes are to be said correct. In the original minutes, Judge Cox's resignation to the board of inspectors, of date June 7th, 1834. Resolution of Judge Cox on private minutes, not on public minutes, not seconded when offered. Mr. Dallas made from warden's journal, page 268, date June 15th, 1832, "We had the grand jury of the county here this day, and I was much struck with the folly and uselessness of such visits : page 45<sup>o</sup>, date October 9th, 1834, "About noon the grand jury, court of Oyer and Terminer Henry Horn foreman, visited the penitentiary, but I did not show them any of the prisoners, but paid particular attention in escorting them around."

On motion, of Mr. Stevens and Mr. Kerr,

Resolved, That the warden produce a copy of a letter addressed by him to the Governor of the Commonwealth, written under an impression that a pardon was about to issue, or applied for, in favor of No. 55, and other prisoners, in which letter the warden gave his estimate of the value of time and labor of these convicts.

The resolution was agreed to.

Committee adjourned to meet on Monday, 12th, at 10 o'clock, A. M.

*MONDAY, January 12, 1835.*

The committee met: and a quorum of members present.

Mr. Bradford, president of the board of inspectors, handed in a resolution from the minutes of the board of inspectors—See paper.

Dr. Baehé appeared and proceeded with his testimony.

John Murphy, a witness, called by the Attorney General, sworn, and proceeded with his testimony; the evidence of John Murphy was closed.

George J. Souders, a witness, called by the counsel for respondents, was sworn, and proceeded in his examination; his testimony closed, and signed by him.

James J. Barclay, a witness, called by respondents counsel, sworn, his testimony taken and signed.

Edward C. Yarnell, a witness, called by the respondents, sworn, his testimony taken and signed.

William Fry, a witness, called by the respondents, sworn, his evidence taken and signed.

Adjourned to meet at 10 o'clock, A. M. on Tuesday.

*TUESDAY, January 13, 1835.*

Committee met: a quorum of members present.

Christian Snyder, a witness, called by the respondents, was sworn, his testimony heard in part; the witness dismissed for the present, to be again called.

Rev. Charles Demmee, a witness, called by the respondents, sworn, his testimony proceeded in, and in the course of his examination, the following question was propounded by Mr. Bradford, the president of the board of inspectors.

Question—What effect has the treatment of the convicts in the Eastern penitentiary, had upon the health and morals, as far as you have observed in your visits.

Question objected to by the Attorney General, and on sustaining the objection ; the committee decided that the objection could not be sustained, and ordered the question to be put ; the witness closed and signed his testimony.

William Foulk, a witness, called by the respondents, sworn, his testimony taken and signed.

Dr. Benjamin Coats, a witness, called by the respondents, sworn, his testimony taken and signed.

George B. Brown, a witness, called by the respondents, sworn, his testimony taken and signed.

The committee adjourned, to meet Wednesday morning the 14th, at 10 o'clock, A. M.

### *WEDNESDAY, January 14, 1835.*

The committee met : a quorum of members present.

William Bayne, a witness, called by the respondents, sworn, his testimony taken and subscribed.

Samuel Adair, a witness, called by the respondents, sworn, his testimony taken and signed.

James Stewart, a witness, called by the respondents, sworn, his testimony taken and signed.

Francis M'Plade, John Hickey and Elisha Baily, were severally called by the respondents, sworn, examined and signed their statements.

The committee adjourned.

### *THURSDAY, January 15, 1835.*

The committee met : a quorum of members present.

George M'Clellen, M. D., William Taylor, David Weatherly, William E. Horner, M. D., William Gibson, M. D., and Anthony Freed, were severally called by the respondents counsel, sworn or affirmed, examined, signed their statements and discharged.

The committee adjourned.

### *FRIDAY, January 16, 1835.*

The committee met : a quorum of members present.

James W. Martien, Rudolph Neff, John Cousty, Israel Ortlipp, J. L. Steeliwagon, James Gillespie, John Havelin, Joseph Rowland, Eugene Frinley, Charles Lukens, M. D., John M. Williams, Francis Leiber, M. D., Francis Pickett and William Foster, were severally called by the respondents counsel, sworn or affirmed, examined, signed their testimony and discharged.

The committee adjourned.



*SATURDAY, January 17, 1835.*

The committee met : A quorum of members present.

James Ferguson, Joseph Watson Nathaniel Chapman M. D. and Rev'd. Samuel W. Crawford, were called by the respondents counsel, sworn or affirmed, examined, signed their statements and were discharged.

On motion of Mr. Stevens and Mr. Petrikin,

Resolved, That all the letters of Alfred Merrick, heretofore produced to the committee, are not considered as evidence, and that they be expunged from the record.

The resolution was agreed to.

The committee adjourned.

*MONDAY, January, 19, 1835.*

The committee met : A quorum of members present,

Seth Austin, Mathew Bevan, and William H. Hood, were severally called, sworn and affirmed, examined and signed their testimony.

On motion of Mr. Leet and Mr. Stevens,

Resolved, That the clerks of the Mayor's court of the city of Philadelphia ; the Quarter Sessions of the county of Philadelphia ; and the court of Oyer and Terminer for the city and county of Philadelphia, be required to produce certified copies of all presentments of grand juries to the said respective courts touching the Eastern Penitentiary.

The resolution was agreed to.

On motion of Mr. Rogers and Mr. Anderson,

Resolved, That the joint committee of the Senate and House of Representatives, enquiring into the management and economy of the Eastern Penitentiary, meet in the north west committee room of the Senate, at Harrisburg, on Saturday the 24th January instant, at 10 o'clock, A. M.

Mr. Stevens and Mr. Petrikin moved to strike out Saturday and insert Monday, and strike out 24 and insert 26.

The amendments were agreed to, and the resolution so amended, passed.

On motion of Mr. Leet and Mr. Petrikin,

Resolved, That the board of inspectors are hereby requested to furnish the joint committee with a statement of the salaries of the warden and different underkeepers and servants employed in the Eastern Penitentiary, since it went into operation, and also of such privileges as

any officer or underkeeper may be allowed by virtue of his office, independently of his regular salary.

The resolution was agreed to.

The committee adjourned.

*TUESDAY, January 20, 1835.*

The committee met. A quorum of members present.

B. W. Richards and Christian Snyder, called by the respondents counsel, sworn, examined, signed their statements, and discharged.

On motion of Mr. Leet and Mr. Petrikin,

Resolved, That the board of inspectors be requested to produce the letter addressed by the Attorney General to the secretary of the board of inspectors, dated, 16th May 1834, returning the papers submitted to his consideration, and particularly enquiring whether the investigation was deemed closed before the board, or was still to proceed; and any answer given by the said secretary, or any member of the board to the particular enquiry above stated.

The resolution was agreed to.

On motion of Mr. Leet and Mr. Rogers,

Resolved, That the board of inspectors be requested to produce the letter addressed to the board by Benjamin W. Richards, referred to in his evidence, and containing, as he has stated, a dissent or protest to the rescinding of a resolution, adopted by the board suspending the removal of the keepers by the warden.

The resolution was agreed to.

On motion of Mr. Leet and Mr. Kerr,

Resolved, That the statements of the number of punishments inflicted every year upon the convicts, alledged by the board of inspectors to be found on record, be returned to the said inspectors for amendment and explanation.

The resolution was not agreed to.

On motion of Mr. Stevens and Mr. Hopkins,

Resolved, That the deposition of Thomas Bradford, jr. may be taken before a judge or alderman on one day's notice to the Attorney General.

The resolution was agreed to.

The committee adjourned.

WEDNESDAY, January 21, 1835.

The committee met—a quorum of members present.

Christian Snyder, again called, James H. Webb, James Wells, Lewis Ramsey, severally called by the Attorney General, sworn, examined, signed their testimony and were discharged.

On motion of Mr. Petrikin and Mr. Kerr,

Resolved, That the thanks of the joint committee of the Senate and House of Representatives of the Commonwealth of Pennsylvania, be tendered to the commissioners of the county of Philadelphia, for their unsolicited, kind and prompt attention, in procuring a place for the committee to hold their sessions during the progress of the investigation into the economy and management of the Eastern Penitentiary.

The resolution was agreed to.

On motion of Mr. Rogers and Mr. Kerr,

Resolved, That Benjamin S. Bonsall Esq. Marshall of the United States, for the Eastern district of Pennsylvania, has the thanks of the joint committee of the Senate and House of Representatives of the Commonwealth of Pennsylvania, for his kindness in offering the committee the use of the District court room, to hold their meetings during their examination of the management and economy of the Eastern Penitentiary.

The resolution was agreed to.

On motion of Mr. Leet and Mr. Kerr,

Resolved, That the Hon. Edward King, has the thanks of the joint committee of the Senate and House of Representatives of the Commonwealth of Pennsylvania, for the use of the court room, in the west wing of the State House, which he kindly and promptly tendered to the committee for the purpose of conducting the investigation of the affairs of the Eastern Penitentiary.

The resolution was agreed to.

Christian Snyder was again called as a witness.

The Attorney General proposed to ask the witness whether he knows the general character of Philip Hahn, jr. for integrity and veracity, and if does, to state it.

The counsel for the respondents, objected to this question because, (although Philip Hahn's testimony has been contradicted as to particular facts,) no evidence has been offered to impeach his general character.

The objection was not sustained, and the witness answered the question.

James H. Webb, James Wells, and Lewis Ramsey, were severally called by the Attorney General, sworn, gave their testimony, signed it, and were discharged.

On motion of Mr. Leet and Mr. Stevens,

Resolved, That when this committee adjourn, they adjourn to meet at the Eastern Penitentiary to-morrow morning at 10 o'clock, A. M.

The resolution was agreed to.

The committee adjourned.

## EASTERN PENITENTIARY, PHILADELPHIA,

*THURSDAY, January 22, 1835.*

The committee met. A quorum of members present.

The committee made a personal examination of the penitentiary, and the prisoners confined therein, and adjourned to meet in Harrisburg, on Monday the 26th January, at 10 o'clock, A. M.

The committee adjourned.